



2.02 PROHIBITION AGAINST WORKPLACE HARASSMENT, DISCRIMINATION AND RETALIATION

Workplace Harassment, Discrimination and Retaliation Prohibited

The City of Portland is committed to a work environment that is free of illegal bias, prejudice and harassment, discrimination, and retaliation and where all individuals are treated with respect and dignity. Every individual has the right to work in a professional atmosphere that promotes employment opportunities and prohibits discriminatory practices.

Workplace harassment, discrimination, and retaliation manifests itself in two primary ways:

1. In forms of harassment, discrimination, and retaliation that violate state and federal laws; and
2. In forms of harassment, discrimination, and retaliation that may not violate law, but which violate this City rule because they are not conducive to creating a productive, respectful and professional work environment for employees that is consistent with the intent of this rule.

This rule covers both types of harassing, discriminatory, and retaliatory behavior. Employees are expected to talk with their supervisor, other managers, or the City's Diversity Development/Affirmative Action Office, about harassment, discrimination, and retaliation they experience regardless of its origin. Supervisors or managers receiving such complaints are expected to take appropriate corrective action to stop the harassment, discrimination, and retaliation.

The intent of this rule is to prohibit conduct that is unlawful but also to prohibit and stop inappropriate conduct based on protected status before it rises to the level of unlawful discrimination, harassment, and retaliation.

It is the City's policy to prohibit workplace harassment, discrimination, and retaliation on the basis of race, religion, gender, marital status, familial status, national origin, age, mental or physical disability (as defined by the Americans with Disabilities Act and state law), sexual orientation, gender identity, source of income, or Vietnam era veterans status, or other protected status under applicable law in any personnel action.

Harassment, discrimination, and retaliation is prohibited in the workplace or in any work-related setting outside the workplace. Every employee shares the responsibility for bringing to the City's attention conduct that interferes with providing a work environment free of illegal discrimination, harassment, and retaliation.

Who is Covered by this Rule?

This Rule covers all elected officials, employees and applicants for employment with the City of Portland, as well as contractors providing services to the City of Portland such as outside vendors or consultants. Contractors providing a service to the City will be notified of this rule.

Definitions

The definitions in this rule are designed to be consistent with the City's goal of stopping inappropriate behavior before that behavior is unlawful. Therefore, these definitions not only define unlawful behavior but define inappropriate behavior prohibited by this City policy.

Harassment: verbal or physical conduct that is derogatory or shows hostility towards an individual because of his or her race, religion, sex, marital status, familial status, national origin, age, mental or physical disability (as defined by the Americans with Disabilities Act and state law), sexual orientation, gender identity, source of income or Vietnam era veterans status, or other protected status under applicable law and:

1. Has the purpose or effect of creating an intimidating, hostile, abusive, or offensive work environment; or
2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
3. Otherwise adversely affects an individual's employment and employment-related opportunities.

In addition to unlawful harassment, harassment under this rule also includes inappropriate verbal or physical conduct because of an individual's protected status. The intent of the person engaging in the inappropriate conduct does not matter.

Sexual Harassment: unwanted sexual advances, requests for sexual favors, and other sexually oriented verbal or physical conduct constitutes sexual harassment under this rule where:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
2. Submission to or rejection of such conduct is used as a basis for employment decisions affecting such individual; or
3. 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.

Discrimination: Unequal or different treatment of an individual in any personnel action on the basis of race, religion, sex, sexual orientation, gender identity, age, mental or physical disability (as defined by the ADA and state law), marital status, national origin or other protected class under applicable law.

Examples of Inappropriate Prohibited Conduct

This list of prohibited inappropriate conduct is meant to give some examples of inappropriate behavior and is not a complete list of conduct prohibited by this rule.

Verbal or Physical Conduct

1. Use of epithets, innuendos, names, comments or slurs because of an individual's race, religion, sex, sexual orientation, gender identity, age, physical or mental disability (as defined by the ADA and state law), marital status, familial status, source of income or Vietnam veterans status, national origin, or other protected status under applicable law
2. Jokes, pranks or other banter, including stereotyping because of race, religion, sex, sexual orientation, gender identity, age, physical or mental disability (as defined by the ADA and state law), marital status, familial status, source of income or Vietnam veterans status, national origin, or other protected status under applicable law.
3. Physical touching or contact of any intimate body part including but not limited to breasts, buttocks, hair, neck, lips, legs, thighs and even feet, such as pinching, kissing, grabbing, patting or neck massages/rubs. Unwelcome physical touching or contact, such as unwelcome hugs or touches, is also prohibited.
4. Using sexual innuendoes, sharing racist, sexist, or sexual stories, making suggestive comments, making suggestive gestures, suggestive actions, sexual propositions, requests for sexual favors, graphic commentaries, suggestive or insulting sounds; and refusing to take "No" when requests for social interaction or dates are refused

Written or Graphic Material

Written, visual, oral, graphic, gestures or other material directed toward a person on the basis of race, religion, sex, sexual orientation, gender identity, age, physical or mental disability (as defined by the ADA and state law), marital status, familial status, source of income, Vietnam veterans status, national origin, or other protected status in accordance with applicable law especially if it is disparaging or displays hostility on the basis of protected status.

This rule prohibits inappropriate language, jokes, written or graphic materials in the workplace or work related setting. Inappropriate materials placed on walls or elsewhere in the employer's premises or circulated in the workplace is prohibited; this includes sending inappropriate jokes or other written or graphic materials via e-mail, the internet, by fax, cell phone, mobile data computer or any other electronic means or downloading this material from the internet.

Religious Accommodation Required

The City is committed to providing a reasonable accommodation of an employee's sincerely held religious beliefs and practices unless such an accommodation would create an undue hardship or would be contrary to other provisions of this policy. A reasonable accommodation may include allowing the employee to use vacation or other appropriate leave for a holy day or other religious observations; wearing religious clothing in the workplace to the extent it does not conflict with other legitimate bureau rules regarding uniforms and safety gear; and such other accommodation as may be reasonable to provide.

Retaliation Prohibited

The City will not tolerate retaliation against any individual who reports discrimination or harassment, testifies, assists, or participates in any manner in an investigation, proceeding or hearing, regardless of the outcome of the complaint. Conduct that would likely deter an individual from reporting or supporting a claim may constitute retaliation. Retaliation can occur even if the underlying complaint of harassment or discrimination is not substantiated. Examples of retaliation towards an individual include demotion, suspension, failing to hire or consider hiring, failing to treat impartially when making employment related decisions, assigning the individual the least desirable jobs. It may also include more subtle forms such as shunning by co-workers.

Manager/Supervisor Expectations

Managers and supervisors are expected to enforce this rule and maintain a productive, non-hostile work environment. Managers and supervisors must take immediate action to stop and prevent discrimination, harassment, or retaliation where they know or have reason to know that it is occurring. Tacit approval of discrimination, retaliation and/or harassment by, for example, laughing and treating a situation as a joke, failing to take action or advising an employee not to complain is prohibited.

Managers and supervisors are responsible for ensuring that notes, comments, posters and other materials on walls, bulletin boards or elsewhere in the workplace, that are derogatory or show hostility toward an individual or group because of race, religion, color, sex, sexual orientation, gender identity, age, physical or mental disability, marital status, national origin or membership in another protected class under applicable law are removed. Managers and supervisors are expected to educate and remind employees about the impropriety of these items as well as the inappropriateness of jokes, slurs, or other negative verbal comments that violate this rule. Managers and supervisors are also responsible for educating employees that the use of City owned equipment, including but not limited to vehicles and electronic devices such as computers, telephones, photocopiers, or faxes for any of these purposes is also prohibited.

If a manager or supervisor receives a complaint from a City employee, an applicant, a member of the public or a contractor about discrimination, harassment or retaliation in a City worksite, they should contact the Human Resources Coordinator or Site Team Manager as soon as possible, but no later than one or two working days after receiving the complaint.

Managers and supervisors are expected to contact human resources personnel **even if** the person making the complaint requested that it be kept confidential. Managers and supervisors should inform an individual making a complaint that strict confidentiality may not be feasible.

Any supervisor or manager who is aware of harassment, retaliation or discrimination and condones it by action or inaction will be subject to disciplinary action.

What Should Employees Do?

1. Not engage in discrimination, harassment or retaliatory conduct in violation of this rule.
 2. If you believe you are being subjected to conduct that violates this rule: tell
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the offender to "stop it!" Say it firmly, without smiling or apologizing. Nothing prevents you from filing a complaint because you did not tell the offender that his or her behavior is unwelcome or ask the offender to stop.

3. Promptly file a complaint using the procedure below if you are subject to discrimination, harassment or retaliatory conduct prohibited by this rule. If you are witness to prohibited conduct, you are encouraged to bring that information to the attention of a supervisor.

Nothing in this Rule is intended to restrict an individual's right to file a complaint with the Bureau of Labor and Industries or the [Equal Employment Opportunity Commission](#), or to file a grievance under a union contract. However, notifying a union steward or other union official does not constitute filing a complaint with the City under the complaint procedure outlined below.

Internal Complaint Process

Any individual who feels he/she has been the victim of prohibited discrimination, retaliation or harassment is encouraged to notify the responsible person(s) of the inappropriateness of their conduct.

Who to Contact

A current City employee is also encouraged to discuss such concerns with his/her immediate supervisor. This will provide the supervisor with an opportunity to review the concerns of the individual. If the employee does not feel comfortable discussing the concerns with his/her immediate supervisor, the employee should contact:

- their supervisor's manager; or
- their bureau director; or
- the bureau's Equal Employment Opportunity (EEO) representative; or
- Bureau of Human Resources staff; or
- the City Diversity Development/Affirmative Action Office.

A non-City employee such as an applicant, a member of the public or a contractor may contact the specific bureau where the alleged discrimination, retaliation, or harassment occurred or file a complaint with the City's Diversity Development/Affirmative Action Office.

Investigation

Bureaus may implement procedures for investigating a complaint or follow the procedure outlined in [Attachment A](#). (The attachment is a procedure only and is not part of the binding Human Resources Administrative Rule).

When appropriate, the individual who receives the complaint may discuss options for informally resolving the complaint with the complainant.

All complaints must be thoroughly and promptly investigated. The individual making the complaint and the accused shall be notified of the results of the investigation and whether action will be taken. Retaliation will not be tolerated.

Immediate action may be required in situations where prohibited harassment, retaliation, or discrimination has occurred.

External Complaint Process

An external discrimination complaint is defined as any complaint of discrimination filed with a court or a state or federal enforcement agency. External discrimination complaints are handled by the Risk Manager and the City Attorney's Office. Any employee who receives a copy of notice of an external discrimination complaint shall immediately forward that complaint to the Risk Manager. The Risk Manager will ensure that the City Affirmative Action and Diversity Office, the City Attorney's Office, and the bureau involved are apprised of the complaint. The Risk Manager and City Attorney's Office are responsible for issuing any communications regarding the complaint.

Confidentiality

All information received in connection with inquiries, or with the filing, investigation, and resolution of workplace harassment, discrimination, and retaliation complaints is treated as highly sensitive. Employees authorized by the City to receive and investigate complaints are required to maintain confidentiality to the extent possible. It is expected and anticipated that all parties involved in complaints will observe the same standard of sensitivity. It is emphasized that this practice is in the best interest of all parties; however, absolute confidentiality cannot be guaranteed.

Complaint Resolution

The Director of Human Resources, in cooperation with the bureau manager and Commissioner-In-Charge, and the City Attorney's office shall have the authority to settle a discrimination complaint in accordance with the City Code.

Complaint Procedures

Important Notice to All Employees: Employees who have experienced conduct they believe is contrary to this rule have an obligation to take advantage of the complaint procedure included in this rule. An employee's failure to fulfill this obligation could affect his/her other rights. Every employee shares the responsibility for bringing to the City's attention conduct that interferes with providing a work environment free of harassment, retaliation and illegal discrimination.

Administrative Rule History

Adopted by Council March 6, 2002, Ordinance No. 176302
Effective April 5, 2002
Revised July 28, 2003
Revised July 1, 2004
Revised July 9, 2007
Revised October 19, 2010

ATTACHMENT A

Investigation Steps

The responsible person receiving the complaint will complete the following steps:

1. Evaluate the complaint.
2. Determine whether there is reason to believe prohibited discrimination or harassment may have occurred.
3. When appropriate, the individual who receives the complaint may discuss options for informally resolving the complaint with the complainant.
This is not a required first step.
4. Document what action and resolution efforts were taken and then communicate the results to the complainant, to appropriate management personnel, and to the accused.
5. Where corrective action is considered to be appropriate, communicate that fact to management personnel who will determine the appropriate corrective or disciplinary action in accordance with the administrative rule on discipline and any applicable collective bargaining agreement.
6. Consistent with applicable rules and collective bargaining agreements, in determining the appropriate corrective action the responsible manager will consider:
 - o the severity of the conduct
 - o position/authority of the perpetrator
 - o number/frequency of encounters
 - o relationship of the parties
 - o conduct of complainant
 - o effect of action on complainant, and
 - o effect of action on the work environment
7. If necessary, take remedial action reasonably calculated to end discrimination or other conduct that violates this rule.