

SUBJECT: PROHIBITED HARASSMENT AND/OR DISCRIMINATION POLICY

The City of Madison is committed to providing equal employment opportunities for all persons and to providing a work environment free from harassment and discrimination. The goal is to achieve and maintain a respectful and welcoming workplace for all members of the community. To that end, this policy will be liberally construed and strictly enforced so as to achieve these goals. Harassment, discrimination and retaliation are prohibited conduct and violations of this policy will not be tolerated.

This policy applies to the official interactions of City elected officials with other City employees at the workplace and at any location that can be reasonably regarded as an extension of the workplace.

Elected officials are expected to serve as role models and to demonstrate their commitment to this policy in their everyday conduct. Any such elected official who fails to take appropriate action upon observing an act prohibited by this policy, or who fails to take appropriate action upon receiving a complaint of a violation of this policy, is guilty of misconduct. Managerial employees are required to promptly notify their Department/Division Head, in writing, of all instances of known, observed and/or reported discrimination, harassment and/or retaliation.

All elected officials are required to cooperate fully with any investigation into alleged violations of this APM. Although a pattern of conduct is usually required for purposes of civil liability, the City does not condone any act of harassment, discrimination or retaliation. Engaging in any such prohibited conduct could result in disciplinary action being taken against the offender, up to and including WHAT?

Definitions

“Complainant” is any person that reports a violation of or who files a complaint under this policy.

“Discrimination” occurs when any employment decision that affects the terms or conditions of employment, such as recruitment/hiring, lay-offs/firings, pay, promotions/demotions, training, transfers/assignments, or leave/benefits is motivated, at least in part, by the employee’s membership in a protected class.

“Harassment” includes verbal abuse, epithets, and vulgar or derogatory language, display of offensive cartoons or materials, mimicry, lewd or offensive gestures and telling of offensive jokes motivated by a person’s membership in a protected class. The behavior can be any of the three following subcategories: “**quid pro quo**” the request for sexual favors in exchange for some other favorable employment action or in exchange for the promise to refrain from taking negative employment action; “**hostile environment**” coworker to coworker behavior composed of abusive and degrading conduct directed against a protected class member that is sufficient to interfere with their work or create an offensive and hostile work environment, and finally, “**respondeat superior**” which occurs whenever a Department/Division Head, manager or supervisor, engages in any act of harassment. Harassment becomes a violation of this policy whenever an employee engages in any of the activities described above or in any similar behavior based upon a person’s membership in a protected class.

“Protected Class” means a person’s race, sex (gender), religion, creed, color, age, disability/handicap, marital status, HIV status, source of income, familial status, ancestry or national origin, sexual orientation, arrest record, conviction record, current or past military service, less than honorable

discharge, use or non-use of lawful products off the employer's premises during non-work hours (notwithstanding the exceptions noted in Sec. 111.35, Wis. Stats.), physical appearance, political beliefs, or the fact that a person is a student.

"Respondent" is any person alleged to have violated this policy.

"Retaliation" is any adverse employment action and/or any adverse action to include any act of revenge, reprisal, intimidation or coercion directed at an employee and motivated by the belief that the employee has either opposed a violation of this policy, has filed a complaint under this policy, has participated in an investigation of a complaint filed under this policy, or has exercised any other right under this policy.

"Sexual Harassment" is one type of harassment and includes unwelcome sexual advances, unwelcome physical contact of a sexual nature or unwelcome verbal or physical conduct of a sexual nature. Unwelcome verbal or physical conduct of a sexual nature includes, but is not limited to: the repeated making of unsolicited, inappropriate gestures or comments; the display of sexually graphic materials not necessary for work purposes; preferential treatment or the promise of preferential treatment in return for submitting to or engaging in sexual conduct; or repeatedly asking someone for a date after having been turned down. Such conduct is considered a violation of this policy when:

1. Submission to such conduct is made openly or by implication a term or condition of an individual's employment; or
2. Submission to or the rejection of such conduct by an individual is used as a basis for employment decisions affecting that person; or
3. Such conduct is patently offensive and unreasonably interferes with the individual's work performance or creates an intimidating, hostile or offensive work environment.

Reports and Investigations of Alleged Violations

1. **Confidentiality Protected:** A high degree of confidentiality is necessary to foster effective resolutions to complaints filed under this policy. Wherever possible, complaints are to be maintained and processed in a manner that can protect confidentiality of all parties within the boundaries of federal, state and local laws. These prohibitions shall not apply to communications between a City employee and their chosen representative/personal attorney.

Investigators shall maintain their notes and reports in a confidential manner that restricts access to individuals who have an official reason for accessing those materials. Upon completion of an investigation, the Investigators will forward their records to the Affirmative Action Department for storage in accordance with the City's records retention policies; unless the complaint is against the Affirmative Action Department, in which case the records will be forwarded to the Human Resources Department.

2. **Right to File a Complaint:** All City employees are strongly encouraged to report any violations of this policy. No employment or disciplinary action will be taken against any employee who makes a good faith complaint even if the investigation fails to substantiate any or all allegations of the complaint. Employees who are witness to a violation of this policy have standing to file a complaint. At their option, employees may file their complaints with any of the following:
 - a. Their supervisor;
 - b. Their Department/Division Head
 - c. The Affirmative Action Department
 - d. The Mayor's Office, if the complaint relates to the conduct of a Department/Division Head or a Mayoral Staff person.

No person may require the employee to file a complaint with him or her nor may they prohibit an employee from filing their complaint with any other person. No employee shall be discouraged from filing a complaint under this policy. A copy of each written complaint must be forwarded to the Affirmative Action Department as soon as is reasonably practicable after it has been made. No employee may file a complaint in bad faith and without a reasonable basis to support the allegations contained in their complaint.

3. **Form of Complaint:** Complaints may be made orally or in writing. The recipient of an oral complaint shall reduce the allegations to writing. The Affirmative Action Department shall create and distribute a complaint form to facilitate the recording of complaints and to promote the uniformity of information gathered in response to such reports. The form shall also capture the resolution to the matter which the complaining employee requests. If the complaint implicates both this policy and other City policies/procedures, the relevant agencies will work together to investigate and resolve the matter. A copy of the complaint shall be forwarded to the appropriate Department/Division Head, the City Attorney, the Affirmative Action Director and, if the complaint relates to the conduct of a Department/Division Head or a Mayoral Staff person, the Mayor. A copy of the complaint form is attached to this policy (see Attachment 1).
4. **Employee Safety Assessment:** If a complaint raises serious questions regarding the safety of any employee, the Department/Division Head shall assess the need to relocate the alleged offender or to take other measures to provide for a safe and secure workplace environment. The complainant should be reassigned only as a last resort temporary measure that should be undertaken only after consultation with the City Attorney, the Human Resources Director and the Affirmative Action Department.
5. **Offer of EAP:** Any employee involved in an investigation should be notified of the availability of confidential assistance, counseling and referral through the City's Employee Assistance Program.
6. **Investigation of Complaints:** Department/Division Heads shall appoint a competent neutral member of their management team to conduct an immediate investigation into alleged violations of this policy. The Affirmative Action Director shall appoint a member of his/her staff to coordinate the investigation. Investigations of complaints filed under this policy must be given the highest priority. Such investigations should be promptly initiated and swiftly completed.

If, assuming all the allegations in a complaint are true, the complaint fails to state a basis upon which to believe a violation of this policy has occurred, the Affirmative Action Director, at his/her discretion, may refer the complaint to such other agency as he/she deems appropriate.

7. **Mayor to Appoint Investigator for Complaints Against Department/Division Heads/Mayoral Staff:** The Mayor shall be responsible for appointing an investigator for any complaint made that a Department/Division Head or mayoral staff member has violated the provisions of this policy. The Mayor may even contract with a non-city employee to conduct the investigation. The Mayor shall be responsible for developing any corrective action plan and may consult with whomever (s)he desires in that process.
8. **Complaints Regarding the Conduct of Elected Officials:** Elected officials of the City of Madison are obligated to abide by the requirements of this policy. City government has limited or no effective means of disciplining its elected officials for violations of this policy. The most effective remedies for such violations are those belonging to the electorate - i.e. the power of the ballot box. However, the City has a legal obligation to investigate any allegations of such violations by its elected officials. Persons having such complaints should file them using the procedures set forth in this policy. Any person receiving a report or a complaint alleging a violation of this policy by an elected official shall forward such information to the Director of the Affirmative Action Department, the Human Resources Director and the City Attorney who shall then jointly conduct a prompt, thorough and fair investigation into such allegations. The elected official being investigated shall receive the Notice of Investigation as set forth below. The Director of the Affirmative Action Department, the Human Resources Director and the City Attorney shall, upon completion of their investigation, issue a public report in compliance with sec. 19.356, Wis. Stats., redacting such information as necessary to protect the identity of the complainant and the cooperating witnesses.
9. **Notice of Investigation:** The Department/Division Head (or the Mayor under Para. 7) shall provide each respondent with notification that a complaint has been filed. Such person shall be provided a copy of the complaint unless doing so would present a danger of physical harm to the complainant or would present a substantial risk of impeding the investigation. The respondent shall also be reminded that such investigations are confidential and that retaliation is prohibited. The respondent shall be further advised that the complaint contains only allegations and that an investigation is being commenced to determine whether any violations occurred. A copy of the Notice of Investigation is attached to this policy (see Attachment 2).
10. **Withdrawal of a Complaint:** A complainant may withdraw their complaint at any time. However, before the City will allow such a person to withdraw their complaint, the investigators must first determine that there is no probable cause to believe that a violation of this policy has occurred and that the complainant's desire to withdraw the complaint is not motivated by a fear of retaliation or is the result of actual retaliation. The appropriate Department Head and the Director of Affirmative Action shall jointly determine whether to discontinue the investigation. In the case of a complaint against a Department/Division Head/Mayoral Staff Member, such determination shall be made by the Mayor.

11. **Final Investigative Report:** The Investigator(s) shall prepare a final report which details the allegations made, the investigative measures undertaken, a summary of witness statements and the investigators' findings and conclusions. The investigators may consult with the City Attorney and the Affirmative Action Director in preparing this report. The emphasis of this report shall be upon determining what actually happened and whether any allegations of the complaint are sustained. This report shall not make any recommendations for discipline nor for corrective action. This report is due to the Department/Division Head within 15 days of the close of the investigation. The Department/Division Head shall determine whether to accept the report or to order additional investigation. A copy of this report shall be forwarded to the City Attorney and the Director of Affirmative Action who may have 15 days to provide comment and review.

If the investigation involves allegations against a Department/Division Head, or a mayoral staff member, the report will be forwarded to the Mayor. A copy of this report shall be forwarded to the City Attorney and the Director of Affirmative Action who has 15 days to provide comment and review.

12. **Corrective Action Plan:** Within 10 days of the receipt of the Final Investigative Report the Department/Division Head shall develop a Corrective Action Plan, in consultation with the Affirmative Action Department, the Human Resources Department and the City Attorney's Office, that addresses the proper courses of action to be undertaken for any sustained allegations of a complaint. The Corrective Action Plan shall encompass steps the Department/Division Head feels are necessary to correct and/or prevent future violations of this policy. These plans may include a requirement of mediation between the Complainant and the Respondent or any other individual(s). Copies of the final plan should be provided to the Affirmative Action Director, the Human Resources Director and the City Attorney. Final responsibility for disciplinary action resides with the Department or Division Head. If the investigation involves allegations against a Department/Division Head or Mayoral Staff Member the Mayor will prepare a Corrective Action Plan.
13. **Follow Up Contact:** The Complainant and the Respondent shall be notified of the results of the investigation by the Affirmative Action Department employee responsible for coordinating the investigation. Such notification shall be made as soon as practical after the final investigative report has been approved or as soon as practical after the Corrective Action Plan has been implemented, whichever event occurs last. If any allegations of a complaint are sustained, the employee's Department/Division Head should periodically make contact with the Complainant and affected employees to determine whether any employee has been the subject of any retaliation and whether the prohibited conduct has ceased.

Training Responsibilities

1. **Obligations of Department/Division Heads:** Department/Division Heads must take affirmative steps to ensure equal employment opportunities for all City employees. While such affirmative management will take many forms, the following steps are required:
 - A. Accept and announce responsibility for equal employment opportunities for employees of her/his department, division or work unit. Announce that all reported incidents of discrimination will be fully investigated and that proven violations will be met with appropriate sanctions, including, if indicated, disciplinary actions up to and including discharge.
 - B. Circulate this memorandum to all employees, at least once a year and review this policy with all lead-workers, supervisors and managers at least once each year. Ensure that, at the earliest date that training is available, arrangements are made for current, newly appointed or temporary supervisory personnel to attend City of Madison training on Conducting Employee Misconduct Investigations.
 - C. Cooperate with the Affirmative Action Department, the City Attorney's Office and the Human Resources Department in the development and implementation of necessary orientation, training and education programs aimed at defining and preventing violations of this policy. Ensure that all employees receive this training as part of their new employee orientation training and at reasonable intervals throughout their careers with the City.

2. **Obligations of the Affirmative Action Department:** the Affirmative Action Department is the lead administrative unit for promoting the protections guaranteed under this policy. Its representatives function as a resource tool for all City employees, including managers and supervisors. The Department shall develop and provide training and education programs for all employees, including specialized training for supervisors, to help promote this policy and the goals embodied therein.