



## **CITY OF KINGSTON POLICY AND COMPLAINT PROCEDURE REGARDING DISCRIMINATION HARASSMENT**

**Purpose** - It is the policy of the City of Kingston to provide and maintain a work environment which is free from unlawful discrimination based on any of the following protected classes: sex (meaning “gender”) (with or without sexual conduct), race, color, creed/religion, national origin, age, disability, marital status, familial status, sexual orientation, military status, domestic violence victim status, arrest or conviction record or predisposing genetic characteristic, pregnancy and any other class protected by law (collectively referred to as “discriminatory harassment” or “harassment”). Harassment based on these characteristics is a form of unlawful discrimination and is prohibited in each and every work environment and each and every situation, which directly impacts the work environment.

This policy also prohibits retaliation towards anyone who either, files a complaint of harassment or participates in the investigative procedures. Retaliation against anyone is in violation of federal and state law and may result in disciplinary action by the City.

This policy also prohibits conduct of one employee toward another that may not rise to the level of unlawful discrimination or harassment, but nonetheless creates a degree of hostility, embarrassment or intimidation that adversely affects the work environment. This includes but is not limited to, gender identification and bullying.

**Policy** - The City of Kingston considers sexual and/or discriminatory harassment and retaliation to be a form of employee misconduct and considers this type of misconduct to be a serious offense, which will not be tolerated. Allegations of harassment and/or retaliation will be investigated thoroughly and if substantiated, will be met with appropriate corrective and/or disciplinary action to the extent of the seriousness of the offense(s), and consistent with the union contract and/or state and federal law.

This Policy also includes and incorporates the Sexual Harassment Policy and Procedure of the City of Kingston, adopted in April 2002.

### **Definitions**

**A. Sexual Harassment** is defined as:

Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submitting to the conduct is made either explicitly or implicitly a term or condition of an individual’s employment or of obtaining public services;
2. Submitting to or rejecting the conduct is used as the basis for an employment decision affecting an individual’s employment or public services; or,
3. Such conduct has the purpose or result of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work or public service environment.

Examples of specific behaviors that may be considered sexual harassment include, but are not limited to:

- Spoken or written words related to an employee's sex
- Any sexual advance that is unwelcome
- Sexually oriented comments
- Showing or displaying pornographic or sexually explicit objects or pictures in the workplace
- Offensive touching, patting or pinching
- Requests for sexual acts or favors
- Abusing the dignity of an employee through insulting or degrading sexual remarks or conduct
- Threats, demands or suggestions that an employee's work status is contingent upon his/her tolerance of or acquiescence to sexual advances
- Subtle pressure for sexual activities
- Leering (*excessive staring*) at a person

Sexual harassment is gender neutral and may involve members of the same or different gender

The Mayor shall annually designate two City employees, one of each sex, who shall serve together with the Director of Human Rights on the three members Sexual Harassment Panel.

Any person who feels he or she is being subjected to the harassing or offensive behavior of any kind should feel free to object to the behavior and shall also report the behavior to their department head, the Mayor or to a member of the Sexual Harassment Panel.

Any supervisor who receives a discriminatory, violent or offensive behavior complaint or, who has reason to believe that such behavior is occurring, shall report these concerns to the Sexual Harassment Panel.

Harassment on the basis of any other protected characteristic is also prohibited.

#### **B. Discriminatory Harassment:**

Under this policy, discriminatory harassment is defined as any verbal or physical conduct that is offensive to or shows hostility or aversion toward an individual because of his/her sex (meaning "gender") (with or without sexual conduct), race, color, creed/religion, national origin, age, disability, marital status, familial status, sexual orientation, military status, domestic violence victim status, arrest or conviction record, predisposing genetic characteristic or pregnancy and that:

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

Examples of this harassing conduct include, but are not limited to:

- Epithets (*abusive language or insults*)
- Slurs or negative stereotyping;
- Threatening, intimidating or hostile acts;
- Denigrating jokes; and,
- Display or circulation in the workplace (including through email) of written or graphic material that denigrates or shows hostility or a strong dislike toward an individual or group, based on an individual's protected class.

## C. Retaliation

An employer may not fire, demote, harass or otherwise "retaliate" against an individual for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination. The same laws that prohibit discrimination based on race, color, sex, religion, national origin, age, and disability, as well as wage differences between men and women performing substantially equal work, also prohibit retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding.

In addition to the protections against retaliation that are included in all of the laws enforced by EEOC, the Americans with Disabilities Act (ADA) also protects individuals from coercion, intimidation, threat, harassment, or interference in their exercise of their own rights or their encouragement of someone else's exercise of rights granted by the ADA.

There are three main terms that are used to describe retaliation. Retaliation occurs when an employer, employment agency, or labor organization takes an adverse action against a covered individual because he or she engaged in a protected activity. These three terms are described below.

Adverse Action is an action taken to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding. Examples of adverse actions include:

employment actions such as termination, refusal to hire, and denial of promotion,

other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance, and

any other action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights.

Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, or negative comments that are justified by an employee's poor work performance or history.

Even if the prior protected activity alleged wrongdoing by a different employer, retaliatory adverse actions are unlawful. For example, it is unlawful for a worker's current employer to retaliate against him for pursuing an EEO charge against a former employer.

Of course, employees are not excused from continuing to perform their jobs or follow their company's legitimate workplace rules just because they have filed a complaint with the EEOC or opposed discrimination.

Covered Individuals are people who have opposed unlawful practices, participated in proceedings, or requested accommodations related to employment discrimination based on race, color, sex, religion, national origin, age, or disability. Individuals who have a close association with someone who has engaged in such protected activity also are covered individuals. For example, it is illegal to terminate an employee because his spouse participated in employment discrimination litigation.

Individuals who have brought attention to violations of law other than employment discrimination are NOT covered individuals for purposes of anti-discrimination retaliation laws. For example, "whistleblowers" who raise ethical, financial, or other concerns unrelated to employment discrimination are not protected by the EEOC enforced laws.

Protected Activity includes:

Opposition to a practice believed to be unlawful discrimination

Opposition is informing an employer that you believe that he/she is engaging in prohibited discrimination. Opposition is protected from retaliation as long as it is based on a reasonable, good-faith belief that the complained of practice violates anti-discrimination law; and the manner of the opposition is reasonable.

Examples of protected opposition include:

- Complaining to anyone about alleged discrimination against oneself or others;
- Threatening to file a charge of discrimination;
- Picketing in opposition to discrimination; or
- Refusing to obey an order reasonably believed to be discriminatory.

Examples of activities that are NOT protected opposition include:

- Actions that interfere with job performance so as to render the employee ineffective; or
- Unlawful activities such as acts or threats of violence.

Participation in an employment discrimination proceeding.

Participation means taking part in an employment discrimination proceeding. Participation is protected activity even if the proceeding involved claims that ultimately were found to be invalid. Examples of participation include:

- Filing a charge of employment discrimination;
- Cooperating with an internal investigation of alleged discriminatory practices; or
- Serving as a witness in an investigation or litigation.

A protected activity can also include requesting a reasonable accommodation based on religion or disability.

## **D. Employee Conduct**

Conduct of an employee that may not rise to the level of unlawful discrimination or harassment, but nonetheless creates a degree of hostility, embarrassment or intimidation that adversely affects the work environment, is also prohibited in the workplace. This includes bullying.

**Bullying** is repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators that takes one or more of the following forms:

- Verbal abuse
- Offensive conduct/behaviors (including nonverbal) which are threatening, humiliating, or intimidating
- Work interference — sabotage — which prevents work from getting done

### **Individuals and conduct covered**

This policy applies to each and every employee and official of the City of Kingston, including the Mayor, Common Council, and members of all boards and commissions. The City of Kingston prohibits harassment, discrimination and retaliation whether engaged in by fellow employees, by a department head, supervisor or manager or by someone not directly connected to the City (e.g., an outside vendor, consultant or citizen).

Conduct prohibited by these policies is unacceptable in the workplace and in any work-related setting outside the workplace, such as during business trips, business meetings, and business-related social events.

## Filing Complaint Procedures

### **A. Reporting Sexual Harassment**

1. Any city employee is encouraged to report an incident of sexual harassment to either their department head, a member of the Sexual Harassment Panel or the Mayor as soon as possible after the alleged incident. An aggrieved person, hereafter referred to as the complainant, will meet with his or her department head to discuss an allegation of sexual harassment and may file a complaint of harassment. Should an individual feel uncomfortable raising an issue of alleged harassment with the department head, any other department head, any member of the Sexual Harassment Panel or the Mayor may be approached. If a complaint is filed, the department head shall send a signed complaint on a form available from any member of the Sexual Harassment Panel. The accused shall be provided with a copy of the complaint upon filing. Verbal complaints may be handled informally.
2. A complaint *should* be filed by a complainant *as soon as possible after* an alleged act of harassment on a form available from the City.
3. The complainant may withdraw his or her complaint any time by filing a notice in writing on a form available from the City.
4. All complaints will be handled in a timely and confidential manner *to the extent possible*. In no event will information concerning a complaint be released by the City to any third party or to anyone within the City who is not directly involved in the investigation.
5. When a written complaint is filed, the department head or panel member shall have fifteen (15) working days to try to resolve the allegation informally by:
  - a. gathering and assessing the facts deemed necessary to resolve it;
  - b. meeting with alleged abuser and complainant separately; and
  - c. using whatever other methods deemed necessary or appropriate to attempt to resolve the complaint.
6. An individual who believes that he or she has been unjustly charged with sexual harassment will be afforded every opportunity to offer and present information in defense of the complaint.
7. If a resolution is achieved by a department head, he or she will prepare a statement that the complaint has been resolved. All parties must sign the statement which shall be sent to the Sexual Harassment Panel. The case will be considered closed.
8. If a complaint is not resolved, it will be turned over to the Sexual Harassment Panel. The Panel will investigate the complaint, call witnesses to appear before the Panel, and review any other evidence it requires. The accused shall be afforded an opportunity to appear before the panel with or without counsel, if he or she desires. The panel will have ten (10) working days to investigate the unresolved complaint and an additional ten (10) working days to render a decision.
9. Notice of Panel's decision will be communicated to both the complainant and the accused.
10. Retaliation against anyone who has filed a sexual harassment complaint is in violation of federal law and may result in disciplinary action by the City. *Employees have the right to be free from retaliation for participation in the complaint procedures.*
11. A person who is found to have committed an act of sexual harassment may be subject to disciplinary action in accordance with the provisions of a negotiated labor agreement or state/federal law, as may be appropriate. Resolution of complaints can include, but is not limited to, an apology, transfer, direction to

stop the offensive behavior, counseling, or training, verbal or written warning, suspension with or without pay or termination.

12. Nothing in this policy should be construed to limit an individual's existing right to file a complaint with the New York State Division of Human Rights or the U. S. Equal Employment Opportunity Commission, or take any legal action which he or she may deem advisable.

## **B. Reporting Harassment, Retaliation and/or Bullying**

1. If an individual is subjected to a situation which he/she believes constitutes harassment, retaliation or bullying in violation of this Policy, the City recommends that the employee confront the harasser directly and advise the harasser that his/her behavior is not welcomed and will not be tolerated; *note that neither this policy nor state/federal law requires that an individual tell an alleged harasser to stop his/her actions*. Employees are encouraged to keep written records of any alleged sexual/discriminatory harassment or retaliatory incidents, including the date, time, location, names of people involved, witness (es), if any, and who said or did what to whom.
2. If an alleged incident of harassment, retaliation or bullying cannot be resolved directly between the parties involved, a written complaint should be filed by the affected employee with the employee's immediate supervisor. In the event the employee does not believe it would be appropriate to file the complaint with the immediate supervisor, it may file directly to the appropriate Department Head, the Mayor or to the City's Director of the Human Rights Commission.
3. All harassment, retaliation or bullying complaints will be investigated as promptly as possible and resolved within a reasonable time after receipt of the complaint.
4. When a complaint is filed with the City's Human Rights Commission, the Director of the City's Human Rights Commission will coordinate an investigation of the complaint. Following the investigation, the Human Rights Director shall issue a written report of findings and conclusions to the Chairman of the Human Rights Commission.
5. Thereafter, an initial determination on the complaint will be issued from the Human Rights Commission to the complainant and respondent.

## **C. APPEAL PROCEDURE**

In the event that the Complainant is not satisfied with the determination issued by the Human Rights Commission, an appeal may be filed with the Mayor. Thereafter, the Mayor or his/her designee will review the appeal and issue a decision within twenty-five (25) working days after receipt of the appeal.

If no appeal is taken within thirty (30) calendar days from the date of the initial determination, the initial determination will constitute the final determination in the matter.

## **D. MISCELLANEOUS**

1. In the event a complaint of harassment, retaliation or bullying is determined to be founded, the City will take disciplinary action in accordance with the provisions of union contract agreements and/or state and federal law.
2. If disciplinary charges are filed against an employee on the grounds that the City has determined the employee is guilty of unlawful harassment, retaliation or bullying, the accused employee may exercise his/her rights through the disciplinary procedure provided for in his/her labor contract and/or state and federal law.

3. The reporting of a false complaint is a serious act and the City will not tolerate it. In the event it is found that the individual bringing the complaint has made false accusations, the City will take action in accordance with the provisions of the union contract and/or state and federal law.
4. All information gathered during an investigation of the harassment, retaliation or bullying complaint will be handled in a confidential manner, to the extent possible.
5. Retaliation against any individual making a harassment complaint or assisting in the investigation of such a complaint is forbidden. Retaliation is a serious violation of this policy which may result in disciplinary action.
6. The City of Kingston will conduct periodic training for employees in each Department of the City on issues surrounding harassment, its effect and its appearances, and the role and responsibility of employees in preventing incidents of harassment complaints.
7. This Policy does not preclude the filing of harassment or retaliation complaints with either the New York State Division of Human Rights or the Federal Equal Employment Opportunity Commission (EEOC), or the pursuing of any other remedies as permitted by law.

**E. RESPONSIBILITIES OF DEPARTMENT HEADS/SUPERVISORS**

1. All department heads and supervisory/managerial personnel of the City of Kingston shall be responsible for enforcing this Policy and shall have particular responsibility for ensuring that the work environment under their supervision is free from harassment and/or retaliation and its effects. Failure of a department head or supervisor/manager to comply with this responsibility may result in disciplinary action.
2. All department heads and supervisory/managerial personnel who receive harassment and/or retaliation complaints will be responsible for immediately forwarding such complaints to the Human Rights office.
3. The City of Kingston will conduct periodic training for department heads and supervisory/managerial personnel in each Department of the City on issues surrounding harassment, its effect and its appearances, and the role and responsibility of department heads and supervisory/managerial personnel in preventing incidents of harassment complaints.
4. The City of Kingston shall distribute this Policy to all City employees. Copies of this Policy will be distributed to new employees as they are hired. Copies of this Policy will also be conspicuously posted.