



NON-DISCRIMINATION POLICY AND PROCEDURES

1. Purpose

The purpose of this policy is to establish City of Woodburn's commitment to providing and maintaining a work environment free from unlawful bias, prejudice, discrimination, harassment or retaliation of any kind. This policy statement reaffirms City of Woodburn's commitment to equal employment opportunity and non-discrimination; and its purpose is to provide all employees with relevant training, by clarifying the roles and responsibilities of supervisors and employees in preventing and responding to discrimination, harassment, or retaliation, and establishing procedures for submitting, investigating and resolving complaints.

Workplace discrimination, harassment, and retaliation may be in two different forms:

1. Harassment, discrimination, and retaliation that violate state and federal laws; and
2. Inappropriate conduct that may not violate law, but which violates City policy because the conduct is not conducive to creating a respectful and professional work environment for employees.

This policy covers both types of behavior. The intent is to prohibit conduct that is unlawful and also to prohibit and stop other inappropriate conduct based on protected status before it rises to the level of unlawful discrimination, harassment, and retaliation.

2. Scope

This policy covers all elected officials, employees, applicants, interns, volunteers and contractors providing service to the City (such as outside vendors or consultants). The policy covers conduct that occurs in the workplace or at work-related events that are off the employment premises and coordinated by or through the City, as well as conduct between a supervisor/manager and an employee off employment premises.

3. Definitions

Protected Class: Protected class is a group of individuals that share distinct, personal or social characteristics or societal status, and which is specifically protected by state or federal laws from adverse social or political stereotyping or prejudice by prohibiting unequal or disparate treatment based upon class membership.

Unlawful Discrimination: Disparate, unequal, and unfair treatment of an individual in the terms, conditions and/or privileges of employment (in hiring, promotions, discipline and discharge) because of an individual's race, color, sex, religion, ethnicity, national origin, age, disability (perceived or record of disability), workplace injury, sexual orientation, gender identity, domestic partnership, marital status, or private health or genetic information; because of an individual's association with a person that identifies with a protected class; because of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 (Expunction) and 419A.262 (Expunction proceeding); because of an individual's veteran status or service in a uniformed service; or because of an individual's status as the victim of certain crimes, status as a good faith whistle blower, or other protected status under federal or state law.

Workplace Harassment: Verbal, non-verbal, or physical conduct that is derogatory, shows hostility towards, or is designed to threaten, intimidate or coerce an individual because of individual's identification with or membership in a protected class (see discrimination definition above), and that,

- i. Has the purpose or effect of creating an offensive, intimidating, hostile, or threatening environment;
- ii. Has the purpose or effect of unreasonably interfering with an individual's work performance; or,
- iii. Otherwise substantially and adversely affects an individual's employment opportunities or access to City programs, services, facilities, or activities.

This definition is intended to include all conduct that constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault or that constitutes conduct prohibited by ORS 659A.082 or 659A.112.

Hostile Work Environment: Treating employees or groups of employees differently because of their identification with or membership in a protected class (see discrimination definition above), resulting in the creation of a hostile or offensive work environment. This conduct is characterized as severe or pervasive and has the purpose or effect of creating a hostile, intimidating work environment; unreasonably interfering with work performance; or otherwise adversely affecting employment opportunities.

To rise to the level of a legal claim of hostile work environment, the harassment must be severe and persistent, not an isolated joke or comment, although these behaviors may still be considered discriminatory, disrespectful or unprofessional. Disrespectful or unprofessional behaviors may be part of a disruptive environment and may be grounds

for discipline, but would not be a civil rights violation unless they are based upon or related to a protected class.

Inappropriate Behavior of a Sexual Nature: Behavior that, while not amounting to sexual harassment, has a sexual component and has the potential to lower morale, decrease productivity or disrupt the workplace.

Nondisclosure Agreement: A contract by which one or more parties agree not to disclose confidential information that they have shared with each other as a necessary part of doing business together.

Non-disparagement Agreement: An agreement used to prevent the parties involved from saying negative things about the other in public after making said agreement.

Quid Pro Quo Harassment: Quid Pro Quo Harassment is a type of sexual harassment where submission to harassment or sexual advances is used as the basis for employment practices and decisions or other benefits and services. Quid pro quo harassment can be committed by someone who has the supervisory authority to make decisions about employment practices or who, because of their position, can control or withhold services or allow a third person to avoid a detriment.

Retaliation: Retaliation is an adverse action against, or treatment of, an individual because he or she exercised rights protected under law such as complaining about harassment or discrimination, assisting with or participating in the investigation or resolution of complaints, including testifying as a witness, or speaking out against harassment or discrimination.

Retaliatory actions may include, but are not limited to:

- i. Demoting or firing an employee with no prior documented disciplinary history, but who filed a complaint or a discrimination lawsuit,
- ii. Labeling an employee as a troublemaker, excessively scrutinizing the employee's work performance, or disciplining an employee who filed a complaint more harshly than actions taken against other employees in the past for similar offenses.
- iii. Excluding an employee who was a witness in a sexual harassment complaint from communications or meetings, blaming an employee because the harasser got in trouble, or ostracizing him or her from work or social activities.

Sexual Assault: Sexual Assault means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation.

Sexual Harassment: Sexual Harassment is unwelcome, pervasive or intrusive sexual advances, touching, flirtation, and propositions, including requests for sexual favors, or

making graphic verbal commentary about an individual's body, making jokes of a sexual nature, displaying sexually suggestive images in the workplace, or engaging in other verbal or physical conduct of a sexual nature when submission to, or rejection of, such conduct by either males or females:

- i. Is made explicitly or implicitly a term or condition of employment;
- ii. Is used as a basis for an employment decision; or,
- iii. Unreasonably interferes with an employee's work performance or creates a hostile work environment.

Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is unwelcome or personally offensive, and that lowers morale or interferes with work effectiveness. Two types of sexual harassment include quid pro quo harassment and hostile work environment.

Third-Party Harassment: Third-party harassment is the type of harassment committed by an outsider such as clients, customers, and vendors who come on site or otherwise interact with employees. Third-party harassment must meet the regular definition for harassment or sexual harassment, that is, it must be severe or pervasive and create a hostile work environment.

4. Policy

It is the policy of City of Woodburn that unlawful discrimination, and workplace harassment, including sexual harassment and inappropriate behavior of a sexual nature is prohibited in the workplace, as well as in any work-related setting outside the workplace, in the provision of providing City services to members of the public, or when using City owned equipment including vehicles and electronic devices such as computers, telephones, photocopiers and faxes, and will not be tolerated. (Use of City equipment in the scope of an employee's duties may not violate this policy so long as it involves a work related purpose such as criminal or disciplinary investigations).

Prevention of harassment, discriminatory activities, retaliation, or other conduct that amounts to creating a hostile work environment must be practiced at all times. In cases where discrimination, harassment or retaliation can be established, disciplinary action, up to and including termination, may be taken by the City.

Taking retaliatory action against an individual because he or she filed a discrimination or harassment complaint, furnished information or participated in any manner of an investigation, compliance review, or hearing is strictly prohibited.

5. Prohibited Conduct

This list of prohibited 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

- i. Use of epithets, innuendos, names, comments, foul language or slurs because of an individual's protected status.
- ii. Jokes, pranks or other banter, including stereotyping because of protected status.
- iii. Unwelcome physical touching or contact, such as unwelcome hugs, and touching or contact with any intimate body part including but not limited to breasts, buttocks, hair, neck, lips, legs, thighs and feet, such as pinching, kissing, grabbing, patting or neck massages/rubs.
- iv. Using sexual innuendoes, sharing racist, sexist, or sexual stories, or graphic commentaries, making suggestive comments, suggestive gestures, suggestive or insulting sounds, or sexual propositions, and requests for sexual favors.
- v. Refusing to take "No" when requests for social interaction or dates are refused.

Written or Graphic Material

- i. Sending, showing, or sharing written, visual, graphic, or other material to a person on the basis of their protected status.
- ii. Sending, showing, or sharing inappropriate language, jokes, written or graphic materials in the workplace or work related setting. Inappropriate materials placed on walls or elsewhere in City 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 (excluding for bona fide work related purposes).
- iii. Transmitting, displaying, or exposing other employees to offensive sexual images or comments.
- iv. Displaying racial symbols, or cartoons, printed material, or other objects which are racially or ethnically offensive.

Supervisor/Subordinate Relationship

Department heads, supervisors, lead workers and managers shall not be in a direct reporting relationship with or supervise someone with whom he or she is personally or intimately involved, nor participate in any employment practice or action regarding that person.

Employees will not be subject to discipline if a supervisor and subordinate self-report a relationship that they are in and work towards a resolution that changes the chain of supervision. The self-report must be made prior to the supervisor engaging in an employment practice regarding the subordinate. The resolution could include

reassignment, transfer, or resignation of one of the employees, or a change in supervisors. Failure to self-report may subject the supervising employee to disciplinary action.

6. Responsibilities

Elected officials, the Chief Administrator, and department directors are responsible for enforcing this policy and for ensuring that all City officials, employees, interns, and volunteers are made aware of and follow this policy.

Elected officials, directors, supervisors and managers are responsible for taking immediate action if they observe or become aware of any form of discrimination, harassment, or retaliation. Immediate action includes intervening to stop the discrimination, harassment, or retaliation, filing a complaint report with Human Resources, and contacting Human Resources for review and consultation. Failure to take such action may result in discipline against the department director, supervisor, or manager.

The Human Resources department is responsible for providing a copy of this policy to each employee and to new employees at the time of hire during orientation, reviewing all complaints of discrimination, harassment or retaliation, for determining the appropriate party to conduct an investigation, for providing oversight of the investigative process, and for providing training and consultation on the policy involving employment with the City of Woodburn.

All employees, interns, and volunteers are responsible for immediately notifying Human Resources or their immediate supervisor if they observe or become aware of a situation involving discrimination, harassment, or retaliation.

Employees are expected to self-report supervisor/subordinate relationships to Human Resources or department management in order to work towards a resolution that will avoid unintentional violations of this policy.

All employer representatives and employees are advised to document any incidents of workplace harassment.

Employees violating this policy may be subject to discipline in accordance with the appropriate collective bargaining agreements and Human Resources Rules.

Probationary employees violating this policy may be subject to immediate termination.

Volunteers violating this policy may be subject to immediate termination and may be barred from future opportunities to volunteer with the City.

The City will provide training on this policy to all City employees upon hire and every three years thereafter.

7. Complaint Procedure

Any individual who feels they have been the recipient of prohibited discrimination, harassment, retaliation, and/or other conduct prohibited by this policy is encouraged to notify the responsible person(s) of the inappropriateness of their conduct.

City employees have the right to voluntarily disclose information regarding workplace harassment incidents and are encouraged to discuss such concerns with their 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 their immediate supervisor, the employee should contact either:

- Their supervisor's manager; or
- Their department director; or
- Human Resources staff.

Notifying a union steward or other union official does not constitute filing a complaint with the City under the complaint procedure outlined above.

An employee who would like to file a complaint has four (4) years from the date on which the incident occurred or within the applicable time limitation on the commencement of an action under ORS 659A.875, whichever is greater.

If an employee discloses any concerns about workplace harassment a copy of this policy shall be provided to the employee at the time of the disclosure by the employer representative receiving the complaint.

Applicants, members of the public, or contractors may contact the specific department where the alleged harassment, discrimination, retaliation, or other inappropriate conduct has occurred, or file a complaint with the Human Resources Department.

All complaints shall be thoroughly and promptly investigated. The individual making the complaint and the accused shall be notified of the results of the investigation and whether any action will be taken. An individual who reports workplace harassment has the right to be protected from retaliation. Retaliation will not be tolerated.

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

Immediate remedial action may be required in situations where prohibited harassment, retaliation, or discrimination has occurred. Human Resources Department can assist the employee who has been a victim of workplace harassment in contacting City's EAP services, and other resources for legal, counseling and support services.

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 and maintained in the Human Resources Department. 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.

The City will follow up with victims of alleged harassment once every three months for the calendar year following the date on which a report of harassment was received, to determine whether the alleged harassment has stopped or if the victim has experienced retaliation, unless the victim objects to such action in writing.

The City will not require or coerce an employee claiming to be aggrieved by workplace harassment to enter into a nondisclosure or non-disparagement agreement, but such employee may voluntarily request to enter into a separation or settlement agreement containing non-disclosure, non-disparagement and/or no-rehire provisions, and that provides the employee seven days to revoke the agreement after its execution.

An employee claiming to be aggrieved by workplace harassment has the right to seek redress through the City's internal complaint process outlined above, or through the Bureau of Labor and Industries (BOLI) under ORS 659A.820 to 659A.865, or the Equal Employment Opportunity Commission (EEOC), or under any other available law, whether civil or criminal. A civil action alleging a violation under ORS 659A.885 must be commenced pursuant to the advance notice of claim against a public body required by ORS 30.275, and not later than five years after the occurrence of the alleged violation.

8. Forms

HR-Complaint /01 Non-discrimination Complaint Form

9. References

Age Discrimination in Employment Act of 1967 and 1975 - [29 U.S.C. 621-634](#)

Americans with Disabilities Act of 1990 as amended - [42 U.S.C. 12101-12213](#)

Bankruptcy Reform Act of 1978

Discrimination against Employees under OSHA Act of 1970 – [29 CFR 1977.4](#)

Equal Pay Act- [29 U.S.C. 206\(d\)](#)

Family and Medical Leave Act of 1993 (FMLA) - [29 CFR 825.301](#)

Genetic Information Nondiscrimination Act of 2008 (GINA) - [42 U.S.C. 2000ff](#)

Oregon Equality Act [ORS 659A.001 – 659A.990](#)

Public Body Tort Claim Notice Statute [ORS 30.275](#)

Public Employee Rights & Benefits ORS Chapter 243

Pregnancy Discrimination Act of 1978 Rehabilitation Act of 1973 – [42 U.S.C. 2000e Section 701](#)

Title VII of the Civil Rights Act of 1964 - [42 U.S.C. 2000e](#)

Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) – [43 U.S.C. Part III, Title 38.](#)

10. Review of Policy and Procedures

This policy will be reviewed every three years or as state and federal regulations are revised and necessitate a change in the policy or procedures.

Adopted: January 2017

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