

**CITY OF MILWAUKEE ANTI—HARASSMENT AND ANTI-BULLYING POLICY**

June 28, 2021, Doc. No. 275228

May, 2018

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Note to DER from the City Attorney’s Office: the following redlines show possible changes to the City’s Anti-Harassment Policy. If these changes are adopted, the associated Employee Complaint Form will also need to be updated accordingly. The City Attorney’s Office recognizes that the Council adopted Council Resolution File 201707 directing DER to investigate the best method to make the City’s “anti-harassment and intimidation policies applicable to City elected officials.” DER may also wish to consider having the Council adopt an updated Policy by legislation. We are now also aware of Council Resolution File 210371 (not yet heard or adopted) that references the Council’s powers regarding malfeasance under Charter 4-28, and that also would have DER update the City’s “workplace violence policy” in addition to the City’s “anti-harassment policy.” We have not yet reviewed the “workplace violence policy” but we are happy to assist you.

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The City of Milwaukee is committed to maintaining a professional and positive work environment where all individuals are treated with respect and dignity. It is therefore the policy of the City of Milwaukee to provide a work environment that is free from bullying, and free from sexual harassment and harassment or discrimination based upon: age; race; national origin; disability; creed (religion); color; marital status; ancestry; sexual orientation; gender identity or expression; arrest record; conviction record; military service; the use or non-use of lawful products off the employer’s premises during non-working hours; declining to attend a meeting or to participate in any communication about religious matters or political matters; genetic testing; lawful source of income; victimhood of domestic abuse or sexual assault; HIV status; domestic partnership; genetic identity; homelessness; familial status; or an individual’s affiliation or perceived affiliation with any of these categories. These categories are protected under Section 703 of Title VII of the 1964 Civil Rights Act, as amended, the State of Wisconsin Fair Employment Relations Act, and City of Milwaukee Code of Ordinances.

Bullying and harassment<sup>1</sup>, including sexual harassment, whether verbal, physical or arising out of conduct at the workplace, at department or City sponsored social functions, or outside of the workplace is unacceptable and will not be tolerated by the City of Milwaukee. Such conduct, whether committed by employees, elected officials of the City, management, department heads, those appointed to Boards or Commissions (“Boards” and “Commissions” as used herein also includes the Boards, Commissions, Task Forces, Committees, Subcommittees, Workgroups, and Councils as the same may from time to time be listed under “Boards and Commissions” on Legistar, or as the same may otherwise be created by the City of Milwaukee) (“Appointed Officials”), vendors, residents or other non-employees will not be tolerated.

The City of Milwaukee is committed to ensuring that:

<sup>1</sup> Per “Knock it Off! Harassment & Bullying in the Workplace.” Wisconsin Lawyer, May 2020, “Both harassment and bullying can be toxic to the work environment and have the potential to result in legal liability for employers; therefore neither type of behavior should be ignored.”

- (1) the appropriate accountability structure and protocols are in place to try to prevent harassment and bullying and respond appropriately when it occurs;
- (2) the appropriate resources and training options are available and used;
- (3) multiple avenues are easily accessible and available for employees to report allegations;
- (4) investigations are conducted by investigators formally trained in conducting harassment investigations;
- (5) employees who make claims of harassment or bullying or provide information related to such claims are not subjected to retaliation;
- (6) the identity of claimants and respondents will be kept confidential to the extent practical and appropriate under the circumstances, and as permitted by law;
- (7) thorough and impartial investigations are conducted as soon as practical, when allegations of harassment or bullying are filed;
- (8) those found to be in violation of this e-Anti Harassment Policy are held accountable in a responsible, appropriate and meaningful way.

Discipline for violation of this Policy may not be progressive, depending on the severity or pervasiveness of the harassment or bullying. A first violation, depending on the facts and circumstances, may warrant suspension, or discharge, or other discipline.

This Policy applies to all general city employees, elected Officials of the City, City managers and department heads, and those appointed to Boards and Commissions. Employees of the Police and Fire Departments should refer to their respective standard operating procedures for the applicable policies.

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### **Prohibited Conduct**

Harassment based upon any protected category and bullying ~~are~~ not tolerated.

Sexual harassment is a form of discrimination on the basis of gender and the conduct described below is prohibited. The term **“sexual harassment”** means any unwelcome sexual advance, request for sexual favors, or other conduct of a sexual nature including, but not limited to, written communication, displaying images or text, sending messages containing images, jokes, videos, sound clips, or any verbal or physical conduct, where:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment;
- (2) Submission to or rejection of such conduct by an individual is used as the basis for an employment decision affecting the person; or
- (3) Such conduct is so severe or pervasive that it unreasonably interferes with a person’s work performance or creates an intimidating, hostile, or offensive work environment.

There are two forms of sexual harassment. They include “Quid pro quo” harassment and “hostile work environment” harassment. **“Quid pro quo”** harassment is when an employee’s benefits (i.e. raises, promotions and desirable working hours) are directly linked to compliance with sexual advances. **“Hostile work environment”** harassment is when the conduct is so severe or pervasive that it creates an offensive and unpleasant working environment. This conduct

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typically consists of verbiage of a sexual nature, the presence of unwelcome sexual materials or unwelcome physical contact that is accepted as a regular part of the work environment. Texts, e-mails, cartoons or posters of a sexual nature; vulgar or lewd comments or jokes; or unwanted touching or fondling all fall into this category.

Examples of sexual harassment include:

**Verbal:** sexual innuendo, suggestive comments, jokes of a sexual nature, lewd remarks and threats, requests for any type of sexual favors (including repeated, unwelcome requests for dates), personal questions about an employee’s social or sexual life, and verbal abuse or “kidding” that is oriented toward a prohibitive form of harassment.

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**Nonverbal:** the distribution, display or discussion of any written or graphic material, including calendars, posters, and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex. Nonverbal harassment also includes suggestive or insulting sounds, leering, staring, whistling, obscene gestures, content in letters and notes, photos, text messages, tweets, and internet postings, or other form of communication that is sexual in nature and offensive.

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**Physical:** Any unwelcome unwanted physical contact, including touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, fondling, and forced sexual intercourse or assault.

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Examples of other types of harassment when focused on a protected group include:

**Verbal:** slandering, ridiculing or making harmful and often untrue statements, persistent name calling, mocking or mimicking someone’s accent, using a person as butt of jokes, use of “hate words,” and verbal abuse or “kidding,” or threat of harm, offensive or hostile statements that belittle, demean, or disrespect that is oriented toward a protected group.

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**Nonverbal:** the distribution, display or discussion of any written or electronic material, including calendars, posters, and cartoons that are offensive or show hostility toward a protected group; suggestive or insulting sounds, leering, staring, gestures that are offensive toward a protected group.

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**Physical:** Any unwelcome unwanted physical contact, including pushing, shoving, kicking, poking, tripping, damage to work area or property; impeding or blocking normal work, access to tools and equipment or movement in workplace oriented toward a protected group.

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“Bullying is defined by the Workplace Bullying Institute as repeated mistreatment of an employee by one or more employees, and includes abusive conduct that is threatening, humiliating or intimidating. Bullying conduct might or might not be based on a person’s protected class<sup>2</sup>.”

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### **Roles and Responsibilities**

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<sup>2</sup> “Knock it Off! Harrassment & Bullying in the Workplace.” Wisconsin Lawyer, May 2020.

Everyone in the City of Milwaukee plays a role in preventing harassment and bullying, and appropriately responding to it when it occurs. The following section of this Policy is designed to identify and list the most critical responsibilities of each level within the organization.

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**EMPLOYEES AND APPOINTED OFFICIALS**

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Employees, and those appointed to Boards and Commissions:

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- (1) Read and understand and adhere to ~~this Anti Harassment~~ Policy and participate in education and training sessions available through their department or the Department of Employee Relations (DER).
- (2) Employees who are the target of harassing or bullying behavior should notify the offender of the offensive behavior and request that the behavior cease.
- (3) Employees who are not comfortable approaching the offender should immediately report it to any management employee or supervisor within their department.
- (4) Employees who are not comfortable reporting the complaint within their chain of command have the right and responsibility to report it to the DER.
- (5) Employees who directly observe behavior that they believe may represent a violation of this Policy are encouraged to report it to any management employee or supervisor within their department, the department’s Personnel Officer or the designated departmental representative performing HR functions, or to the DER.
- (6) Employees are expected to cooperate and participate in harassment and other workplace investigations when asked.

*Note: employees who violate this Policy are subject to discipline, including, where applicable, discharge or demotion. Those appointed to Boards and Commissions who violate this Policy, and those who are elected to office, are subject to possible removal and/or suspension under law, including removal or suspension under Wis. Stat. 17.12 and/or under Charter 4-28. Council members are also subject to the Council’s Rule of Conduct and to punishment, fine, and expulsion under those Rules. See Milwaukee Common Council Procedure Digest.*

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**EMPLOYER (THE CITY)**

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Managers and Supervisors, Elected Officials, and Department Heads:

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- (1) Exhibit behaviors that demonstrate support for the City’s commitment to a professional and positive work environment where all individuals are treated with respect and dignity.
- (2) Clearly define behavioral expectations in the workplace, enforce applicable work rules and policies and promptly address violations when they occur.

(3) Respond appropriately to behavior which may not rise to the level of severe or pervasive so as to rise to legally actionable “harassment” or “bullying” but which, if left unchecked, may lead to same.

(4) Exercise their affirmative duty to refer for investigation reported harassing or bullying behavior, or observed harassing behavior, even in the absence of a complaint.

(5) Take every complaint seriously. Review, look into, and document all complaints or concerns of alleged or possible harassment or discrimination or bullying no matter how minor or who is involved.

(6) Take necessary steps to ensure the confidentiality of the complainant, witnesses and respondent to the extent possible during an investigation.

(7) Take necessary steps to prevent continuing harassment or bullying during and after any investigation or complaint.

(8) Take the necessary steps to protect all parties from retaliatory actions stemming from their participation in the complaint process.

(9) Read and understand, and adhere to, this Policy and participate in education and training sessions available through their department or the DER.

(10) Are expected to cooperate and participate in harassment, bullying, and other workplace investigations when asked.

Note: Managers and supervisors, department heads, and elected officials, who violate this Policy, or who knowingly allow or tolerate bullying or harassment, including sexual harassment, or retaliation, including failure to immediately report such misconduct to their Personnel Officers or DER, or who fail to report as required by this Policy, are in violation of this Policy and subject to discipline, including, where applicable, discharge or demotion to a position with no supervisory authority.

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#### **PERSONNEL OFFICERS AND DEPARTMENTAL REPRESENTATIVES PERFORMING HR FUNCTIONS**

(1) Ensure employees, elected officials, department heads, and those appointed to Boards and Commissions, understand their roles and responsibilities in compliance with this Policy.

(2) Attend mandatory technical training on how to investigate complaints of harassment or bullying as required by the DER.

(3) Ensure that allegations are promptly and thoroughly investigated.

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- (4) Take every complaint seriously. Review, look into, and document all complaints or concerns of alleged or possible harassment or discrimination or bullying no matter how minor or who is involved.
- (5) Take necessary steps to ensure the confidentiality of the complainant, witnesses and respondent to the extent possible during an investigation.
- (6) Take necessary steps to prevent continuing harassment or bullying during and after any investigation or complaint.
- (7) Take the necessary steps to protect all parties from retaliatory actions stemming from their participation in the complaint process.
- (8) Provide complainant of alleged harassment or bullying with information on available supportive City services/resources. This may include a suggested referral to EAP, information on City's workplace clinic, traveling clinic, and UHC's registered nurse liaison.
- (9) Notify the DER when an investigation of allegations of harassment or bullying is going to be conducted and notify the DER of the preliminary findings of the investigation before its conclusion.

**DEPARTMENT HEADS AND ELECTED OFFICIALS**

- (1) Comply with this Policy, and proactively create a culture of civility and respect and make every effort to increase the diversity and inclusion at all levels of the workforce.
- (2) Ensure that an appropriate notice of this ~~e Anti Harassment~~ Policy is posted in a conspicuous place where employees work and congregate.
- (3) Ensure that departmental managers and supervisors understand and comply with this Policy and with their responsibilities in preventing bullying, sexual harassment and any other form of harassment.
- (4) Ensure that job descriptions and performance evaluation forms for management and supervisory personnel clearly and thoroughly document responsibilities and expectations established by this Policy.
- (5) Ensure that managers and supervisors are properly trained to promptly refer allegations of harassment and bullying for investigation and that they take the necessary steps to prevent continuing harassment or bullying or retaliation during and after any investigation and complaint.
- (6) Ensure that at least one official outside of the employee's chain of command is authorized and available to receive claims of harassment or bullying.
- (7) Ensure that risk factors that contribute to the prevalence of harassment or bullying in their workplaces are identified and take corrective action before offensive behavior reaches a legally-actionable level.
- (8) Enforce workplace rules, regardless of level or position of the respondent in the department.
- (9) Collaborate with representatives from the DER when investigating allegations of harassment or bullying and implementing corrective action when findings of an investigation call for it.

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**DER**

- (1) Issue and oversee the enforcement of , and compliance with, this e City's Anti Harassment Policy.

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(2) Promptly investigate allegations of harassment or bullying; prepare reports summarizing the results of investigations, and issue recommendations to appointing authorities, and to the Mayor, Common Council President, and City Attorney.

(3) Ensure appropriate training resources are available for employees, managers and supervisors, department heads, and Personnel Officers, elected officials, and those appointed to Boards and Commissions.

(4) Ensure this ~~e Anti Harassment~~ Policy is shared with new general city employees at time of New Employee Orientation, to newly elected officials, and to newly appointed members of Boards and Commissions promptly after election or after appointment confirmation.

(5) Ensure that departmental work rules and policies address potentially harassing or bullying behavior and conduct and include this Policy.

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DER recognizes that leadership drives workplace culture, and that prompt, objective, response to complaints under this Policy also drives workplace culture. DER will adhere to this Policy.

### Complaint Procedure

Employees who believe they are being harassed or bullied are encouraged to clearly and promptly notify the offender that the behavior is unwelcome and ask offender to stop the unwelcome behavior. If for any reason, an employee does not wish to approach the offender directly or if such discussions do not successfully end the harassment or bullying, the employee should inform his or her supervisor, a department manager, or the DER HR Compliance Officer, by calling 414-286-6210 or in person at City Hall, Room 706.

These parties will provide assistance to individuals in an attempt to resolve issues of sexual harassment or other types of harassment or bullying. In all cases, efforts should be made to resolve and correct sexual harassment or other types of harassment or bullying issues prior to the filing of a complaint. Employees should understand that reports of alleged harassment or bullying should be made soon after the behavior occurs as it facilitates an expedited investigation and timely resolution. However, it is important to recognize that behavior that represents a violation of this Policy can be reported at any time.

To initiate a formal investigation into an alleged violation of this Ppolicy, employees may be asked to provide a written statement about the alleged misconduct or complete a complaint form. Employees may request assistance in completing the statement. The statement should include as much of the following information as possible:

- (1) The name, department and position of the person or persons allegedly causing the harassment or bullying.
- (2) A description of the incident(s), including the date(s) and location(s) where the incident(s) occurred.
- (3) The names, titles, and contact information of any witnesses and their contact information (email and/or phone numbers).
- (4) The effect of the incident(s) on the complainant's ability to perform his or her job, or other terms or conditions of employment.

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- (5) The names of other individuals who might have been subject to the same or similar harassment or bullying.
- (6) The steps, if any, the complainant has taken to try to stop the harassment or bullying, including the names and contact information of the individuals made aware of the allegation(s) and their respective response(s).
- (7) Any other information the complainant believes to be relevant.

**Investigation and Findings**

Complaints will be investigated in a timely, prompt, and confidential manner. In no event will information concerning a complaint be released to or discussed with anyone who is not involved with the investigation while the investigation is pending.

Except as otherwise provided below, iInvestigations shall only be conducted by the DER or under DER supervision by departmental human resources professionals or other managers who function in the capacity of HR professionals who have been formally trained in conducting investigations into harassment complaints. If the investigation is of any elected official, then the investigation shall only be conducted by a DER-selected third-party attorney (i.e. not an employee of the City of Milwaukee) who practices in or who has expertise in the area of employment law and who shall report findings and recommendations to DER; and DER shall in turn make recommendations and take actions based on the report. Also if DER determines, for any other investigation, that DER or City staff are unable to conduct the investigation in an objective and impartial manner, then the investigation shall be conducted by a DER-selected third-party attorney (i.e. not an employee of the City of Milwaukee) who practices in or who has expertise in the area of employment law and who shall report findings and recommendations to DER.

Any ~~The~~ investigation will be prompt, objective, and thorough. The investigation will include the following:;

- (1) Notification to ~~DER the department head and the DER~~ that a complaint has been received and will be investigated.
- (2) Implementation of action steps to protect the complainant from retaliatory behavior or conduct and to protect the integrity of the investigation.
- (3) Interviews with all relevant parties involved in the complaint including witnesses.
- (4) A report summarizing the investigation process, evidence reviewed, findings, and recommendations.
- (5) Notification to relevant parties of findings and recommendations, as appropriate.

If an investigation (whether conducted by or under DER’s supervision, or by a third-party attorney) reveals that a harassment or bullying complaint is valid, supervisors and the department head, and elected officials, will take immediate action to stop the harassment or bullying and to prevent its recurrence. The DER will recommend the appropriate corrective action, including but not limited to disciplinary action, and/or suspension or removal from office or appointment.

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The level of discipline or responsive action to be considered will depend on: (a) the severity, frequency, and pervasiveness of the conduct; (b) prior instances when a respondent has been found to have harassed or bullied; (c) other mitigating circumstances; and (d) the preponderance of the evidence. Recommended action may include a verbal or written warning, suspension, demotion, or discharge.

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If the results of the investigation conducted pursuant to this Policy are inconclusive or if it is determined that there has been no violation of this Policy but potentially problematic conduct may have occurred, ~~the~~ appropriate preventive action ~~shall~~ may be promptly recommended by the investigator, and DER shall also make a prompt recommendation if DER itself did not conduct the investigation.

#### False and Malicious Accusation

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If an investigation conducted pursuant to this Policy results in a finding that the reporting individual falsely and maliciously accused another individual of harassment, or sexual harassment, or bullying, the reporting individual will be subject to disciplinary action.

#### Retaliation

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Retaliation or attempted retaliation in response to lodging a complaint or involvement in the complaint process is a violation of this Policy. Retaliation includes the imposition of any hardship, loss, benefit or penalty on an employee in response to filing or responding to a bona fide complaint of discrimination or harassment or bullying or appearing as a witness in the investigation of a complaint. Retaliation also includes adverse action taken against someone who is associated with the individual opposing the discrimination or harassment or bullying, such as a friend or family member.

#### Confidentiality Considerations

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During the complaint and investigation process, the confidentiality of the information received and the privacy of the individuals involved will be protected to as great a degree as is possible.

The wishes of the complainant for confidentiality will be considered in the context of the City's legal obligation to act on the charge and ~~legal the~~ right of the respondent to obtain information.

The investigation will protect the privacy of individuals who file complaints or reports, individuals who provide information during the investigation and the person(s) alleged to have engaged in harassment or bullying, to the extent legally possible. However, some of the records obtained or created during the investigation may be subject to disclosure under applicable Wisconsin Public Records statutes.

### **Records Retention**

Investigative records are retained separately from the personnel files and should be destroyed under supervision in accordance with the applicable retention schedule, provided that no legal action is pending.

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