



Department of Employee Relations

Tom Barrett
Mayor

Maria Monteagudo
Director

Renee Joos
Employee Benefits Director

Nicole Fleck
Labor Negotiator

April 27, 2018

To the Honorable
Finance and Personnel Committee
Common Council
City of Milwaukee

Re: Common Council File #180118: Communication from the Department of Employee Relations relative to recommendations for implementation of an anti-sexual harassment training policy for City employees.

Dear Committee Members:

The resolution of Common Council File #171341 directed the Department of Employee Relations to submit recommendations for implementing an anti-sexual harassment training policy for City employees within 90 days of its adoption.

As you may be aware, under Mayor Barrett's direction, DER began working on updating the City's Anti-Harassment Policy and training strategies in the Fall of 2017. I am happy to report to this Committee the actions and activities that have taken place in support of this.

- (1) The new Anti-Harassment Policy was finalized in December of 2017. The policy was drafted to comply with new EEOC guidelines related to harassment prevention. It includes:
 - An unequivocal statement that harassment based on any protected characteristic will not be tolerated;
 - Easy to understand descriptions of prohibited conduct or behaviors that constitute as harassment (including examples);
 - Effective reporting procedures for both the employee experiencing the harassment and employees who observe the harassment, as well as multiple avenues to report in a manner easily accessible to all;
 - Clear definitions of roles and responsibilities by all levels of the organization including department heads, managers, first-line supervisors, and employees;
 - Appropriate protocols and reporting systems that provide a prompt, thorough, and impartial investigation by the department or by DER;
 - Protections for employees to feel safe and free of retribution when reporting allegations experienced or observed;
 - A statement indicating that the identity of the individuals involved will be kept confidential to the extent possible consistent with a thorough and impartial investigation;
 - A clear statement specifying that those who engage in prohibited conduct will be held responsible in a meaningful, appropriate, and proportional way;
 - Assurances that the department will take immediate and proportionate corrective action when it determines that harassment has occurred and respond appropriately to behavior which may not be legally actionable "harassment" but which, left unchecked, may lead to the same.

- (2) A meeting with human resources personnel from general city departments was held on January 16th to roll out the new policy and discuss training strategies being pursued to meet the training needs of supervisors and employees. DER wanted to ensure departments that training initiatives would take into account their business needs and would be designed to minimize disruption to their operations.
- (3) On February 1st, the DER director worked with the City Attorney's Office to facilitate and deliver a training session for HR managers on "How to Conduct Workplace Investigations".
- (4) A total of ten supervisory training sessions were scheduled and held during the week of March 5th for all City managers and supervisors. A total of 411 employees were trained by Fran Sepler, the consultant who served as a subject matter expert for the EEOC in preparing the "Study of Harassment in the Workplace" published in 2016, who was responsible for designing the EEOC's training module on this topic. The training program was customized to meet the City's needs and was very well-received.
- (5) Fran Sepler also facilitated a train-the-trainer session, whereby departmental personnel officers and DER staff were trained to facilitate supervisory training sessions in the future.
- (6) DER has purchased a learning management system to facilitate trainings for the remaining general City employees. Sessions will be coordinated and facilitated, taking into account departmental needs, and will include a review of the City's Anti-Harassment Policy. Resources available via this platform include:
 - Unlimited Use – 24/7 on any connected device, anywhere in the world
 - Course Creator – create custom courses using videos or PowerPoints
 - A Free LMS – easily assign, track, and document learner's activities
 - A broad range of training categories, including: customer service, compliance, safety, software, respectful workplace, management, human resources, accountability, harassment, change management, ergonomics training, diversity, disease-specific training, employee retention, emergency preparedness training, forklift/crane safety, homeland security training, healthcare and hygiene, social media, onboarding, etc.

Please find attached the new Anti-Harassment Policy for your review. I look forward to discussing DER's response to this important subject at the Finance and Personnel Committee meeting next week.

Sincerely,



Maria Monteagude
Employee Relations Director

Attachment – Anti Harassment Policy

ANTI – HARASSMENT POLICY February 2018

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 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; and genetic testing. 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.

Harassment, 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, management, vendors, residents or other non-employees will not be tolerated. The City of Milwaukee is committed to ensuring that:

- (1) the appropriate accountability structure and protocols are in place to try to prevent harassment 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 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 are filed;
- (8) those found to be in violation of the 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. A first violation, depending on the facts and circumstances, may warrant suspension or discharge.

This Policy applies to all general city employees. Employees of the Police and Fire Departments should refer to their respective standard operating procedures for the applicable policies.

Prohibited Conduct

Harassment based upon any protected category is 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 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.

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.

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

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 that is oriented toward a protected group.

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.

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.

Roles and Responsibilities

Everyone in the City of Milwaukee plays a role in preventing harassment 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.

EMPLOYEES

- (1) Read and understand the 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 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.

EMPLOYER (THE CITY)

Managers and Supervisors

- (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" but which, if left unchecked, may lead to same.
- (4) Exercise their affirmative duty to refer for investigation reported harassing 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 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 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.

Note: Managers and supervisors who knowingly allow or tolerate sexual harassment or retaliation, including failure to immediately report such misconduct to their Personnel Officers or DER, are in violation of this Policy and subject to discipline, including discharge or demotion to a position with no supervisory authority.

Personnel Officers and departmental representatives performing HR functions

- (1) Ensure employees understand their roles and responsibilities in compliance with this Policy.
- (2) Attend mandatory technical training on how to investigate complaints of harassment as required by the DER.
- (3) Ensure that allegations are promptly and thoroughly investigated.
- (4) Take every complaint seriously. Review, look into, and document all complaints or concerns of alleged or possible harassment or discrimination 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 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 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 is going to be conducted and notify the DER of the preliminary findings of the investigation before its conclusion.

Department Heads

- (1) 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 the 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 their responsibilities in preventing 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 for investigation and that they take the necessary steps to prevent continuing harassment 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.
- (7) Ensure that risk factors that contribute to the prevalence of harassment 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 and implementing corrective action when findings of an investigation call for it.

DER

- (1) Issue and oversee the enforcement of the City's Anti-Harassment Policy.
- (2) Investigate allegations of harassment; prepare reports summarizing the results of investigations, and issue recommendations to appointing authorities.
- (3) Ensure appropriate training resources are available for employees, managers and supervisors, and Personnel Officers.
- (4) Ensure the Anti-Harassment Policy is shared with new general city employees at time of New Employee Orientation.
- (5) Ensure that departmental work rules and policies address potentially harassing behavior and conduct.

Complaint Procedure

Employees who believe they are being harassed 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, the employee should inform his or her supervisor, a department manager, or the DER HR Compliance Officer, by calling 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. In all cases, efforts should be made to resolve and correct sexual harassment or other types of harassment issues prior to the filing of a complaint. Employees should understand that reports of alleged harassment 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 policy, 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.
- (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.
- (5) The names of other individuals who might have been subject to the same or similar harassment.
- (6) The steps, if any, the complainant has taken to try to stop the harassment, 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 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.

Investigations shall only be conducted by the DER or 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. The investigation will be prompt, objective, and thorough. The investigation will include the following:

- (1) Notification to 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 reveals that a harassment complaint is valid, supervisors and the department head will take immediate action to stop the harassment and to prevent its recurrence. The DER will recommend the appropriate corrective action, including but not limited to disciplinary action.

The level of discipline 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; c) other mitigating circumstances; and d) the preponderance of the evidence. Recommended action may include a verbal or written warning, suspension, demotion, or discharge.

If the investigation is inconclusive or if it is determined that there has been no violation of policy but potentially problematic conduct may have occurred, the appropriate preventive action may be recommended by the investigator. If an investigation results in a finding that the reporting individual falsely and maliciously accused another individual of sexual harassment, the reporting individual will be subject to disciplinary action.

Retaliation

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 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, such as a friend or family member.

Confidentiality Considerations

During the complaint 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 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, 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.