

ADMINISTRATIVE REGULATION	Regulation Number 6 – 1 – 04	
	Section Human Resources	
	Date Issued	City Solicitor
	Mayor	Director, HR Risk & Safety
Subject Policy on Sexual Harassment		

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1.0 PURPOSE

It is the policy of the City of Allentown to maintain a working environment that is free from all forms of discrimination, including sexual harassment. The objective of this policy is to define workplace sexual harassment and to outline procedures for filing complaints, investigating sexual harassment claims and issuing appropriate disciplinary measures in the case of violations. The City of Allentown has a Zero Tolerance policy for Sexual Harassment. This policy is in compliance with Title VII of the Federal Civil Rights Act of 1964, governing discrimination in the workplace and other public areas.

2.0 APPLICABLE TO

All City of Allentown employees, elected officials, appointed officials, third party contractors, and third party vendors.

3.0 DEFINITION, EXAMPLES AND COVERED EMPLOYEES

- 3.1 **Definition:** Sexual harassment is unwelcome conduct of a sexual nature, which includes, but is not limited to the following: unwelcome sexual advances; requests for sexual favors, verbal and/ or physical acts of a sexual nature. An aggregation of incidents can constitute sexual harassment even if the incidents considered on their own would not be harassing.

Further, sexual harassment is considered discrimination when:

- 3.1.1 Submission to that conduct is made either explicitly or implicitly as a term or condition of employment;

- 3.1.2 Submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or
 - 3.1.3 The conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
- 3.2 **Examples:** Examples of sexual harassment include, but are not limited to, the following when such acts or behavior come within one of the above definitions.
- 3.2.1 Either explicitly or implicitly conditioning any term of employment (e.g. continued employment, wages, evaluation, advancement, assigned duties or shifts) on the provision of sexual favors.
 - 3.2.2 Touching or grabbing a sexual part of employee's body.
 - 3.2.3 Touching or grabbing any part of an employee's body after that person has indicated, or it is known, that such physical contact is unwelcome.
 - 3.2.4 Continuing to ask an employee to socialize on or off duty when that person has indicated that she or he is not interested.
 - 3.2.5 Making unwelcome sexual advances, propositions or other sexual comments, such as sexually oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience.
 - 3.2.6 Displaying or transmitting, in person or electronically, sexually suggestive pictures, objects, cartoons or posters if it is known or should be known that the behavior is unwelcome.
 - 3.2.7 Writing sexually – suggestive notes or letters or electronic communications if it is known or should be known that the person does not welcome such behavior.
 - 3.2.8 Referring to or calling a person a sexualized name if it is known or should be known that the person does not welcome such behavior.
 - 3.2.9 Telling sexual jokes or using sexually vulgar or explicit language in the presence of a person if it is known or should be known that the person does not welcome such behavior.
 - 3.2.10 Retaliation of any kind for having filed or supported a complaint of sexual harassment (such as, but not limited to, ostracizing the person, pressuring the person to drop or not support the complaint, adversely altering the person's duties or work environment, etc.).
 - 3.2.11 Derogatory or provoking remarks about or relating to an employee's gender.
 - 3.2.12 Harassing acts or behavior directed against a person on the basis of an employee's gender.
 - 3.2.13 Off – duty conduct that falls within the above definition(s) and affects the work environment.

- 3.3 Sexual harassment can also consist of intimidating, abusive or hostile behavior of a nonsexual nature toward an employee on the basis of gender. Verbal abuse and hostility that is not sexual in character but is directed solely at females or males because of their gender or sexual orientation, for example, is likewise a violation of this Policy on the same level as harassment of a sexual nature.
- 3.4 Sexual harassment can also be same – sex harassment. It is likewise a violation of this policy for a male to harass another male or for a female to harass another female.
- 3.5 Sexual harassment can also take the form of offensive conduct by non – employees, such as vendors, outside contractors and the like, against employees in the workplace.
- 3.6 **Covered Employees:** This sexual harassment policy applies to all elected officials and employees of the City of Allentown, including but not limited to, full – and part – time employees, seasonal and temporary employees, employees covered or exempted from personnel rules or regulations, on – or off – duty employees harassing another City employee on or off duty, employees working under contract for the City and employees harassing non – employees while the employee is on duty or in City uniform, premises or in City vehicles.

4.0 PROCEDURES, INVESTIGATIONS, SANCTIONS AND APPEAL NOTIFICATIONS

- 4.1 **Procedure:** Any employee who feels subjected to sexual harassment should immediately contact one of the persons below with whom the employee feels comfortable. Complaints may be made orally or in writing, electronically or by mail to:
- The employee's immediate supervisor
 - The employee's department director
 - Any member of the Human Resources, Risk and Safety Team
 - The City Solicitor or any Solicitor within the City Solicitor's Office
 - The Managing Director
 - The Mayor
- 4.2 All details of a sexual harassment complaint will be held in confidence to the extent possible. Although employees are encouraged to try to resolve disputes with the help of their immediate supervisor, employees have the right to circumvent the chain of command in selecting the person to whom to make a complaint of sexual harassment.
- 4.3 The employee should be prepared to provide the following information to the individual to whom a complaint of sexual harassment is made.
- 4.3.1 The employee's name, department and position title.
- 4.3.2 The name of the person committing the sexual harassment, including person's title, if known.
- 4.3.3 The specific nature of the sexual harassment, its duration and any employment action (demotion, failure to promote, dismissal, refusal to hire, transfer, etc.) taken against the

employee as a result of the harassment, or any other threats made against the employee as a result of the harassment.

- 4.3.4 Any witnesses to the harassment.
- 4.3.5 Whether the employee has previously reported such harassment and, if so, when and to whom.
- 4.4 The filing of a bona fide complaint or otherwise reporting sexual harassment will not adversely affect the individual's employment status or future terms and conditions of employment. A bona fide complaint is one that is made in good faith by the complainant, an observer or someone who has been made aware of a situation they believe is sexual harassment.
- 4.5 **Managers and Supervisors** must deal expeditiously and fairly when they have any knowledge of sexual harassment within their department or bureau, whether or not there has been a written or formal complaint. They must:
 - 4.5.1 Take all complaints or concerns of alleged or possible harassment seriously no matter how minor it may seem or who is involved.
 - 4.5.2 Report all incidents to HR immediately so that a prompt investigation can occur.
 - 4.5.3 Take any appropriate action to prevent retaliation or prohibited conduct from recurring during and after any investigations or complaints.
 - 4.5.4 Managers and supervisors who knowingly allow or tolerate sexual harassment or retaliation, including the failure to immediately report such misconduct to HR, are in violation of this policy and subject to discipline up to and including termination.
- 4.6 **The Director of Human Resources, Risk & Safety, or the Solicitor if the complaint is against the Director of Human Resources, Risk and Safety** is responsible for:
 - 4.6.1 Ensuring that both the individual filing the complaint (complainant) and the accused individual (respondent) are aware of the seriousness of a sexual harassment complaint.
 - 4.6.2 Explaining the sexual harassment policy and investigation procedures to all parties involved.
 - 4.6.3 Exploring informal means of resolving sexual harassment complaints.
 - 4.6.4 Notifying the police if criminal activities are alleged.
 - 4.6.5 Arranging for an investigation of the alleged harassment and the preparation of a written report.
 - 4.6.6 Submitting a written report summarizing the results of the investigation and making recommendations to designated government officials.
 - 4.6.7 Notifying the complainant and the respondent of the corrective actions to be taken, if any, and administering those actions.
 - 4.6.8 The Director of Human Resources, Risk & Safety will determine if an in-house investigation will be conducted or if a third party will be contracted to complete the investigation.
- 4.7 **Investigation**: In the event the City of Allentown receives a complaint of sexual harassment, or otherwise has reason to believe that sexual harassment is occurring, it will take all necessary steps to

ensure that the matter is promptly investigated and addressed. All investigations will be executed by the Director of Human Resources, Risk and Safety, or his or her designee. In the event that the complaint is against the Director of Human Resources, Risk and Safety, the investigation will be conducted by the City Solicitor or his or her designee. Investigations will be held in the strictest confidentiality possible.

- 4.8 The City of Allentown is committed and required by law to take action if it learns of potential sexual harassment, even if the aggrieved employee does not wish to formally file a complaint.
- 4.9 Care will be taken to protect the identity of the complaining party and of the accused party or parties, except as may be reasonably necessary to successfully complete the investigation. It shall be a violation of this policy for any employee who learns of the investigation or complaint to take any retaliatory action that affects the working environment of any person involved in this investigation. Intentionally impeding an investigation will be considered a violation of this policy and anyone found doing so will be subject to discipline up to and including termination.
- 4.10 When an allegation of sexual harassment is made by any employee, the person to whom the complaint is made shall immediately prepare a report of the complaint and submit it to the Human Resources Director, or in the event the sexual harassment complaint is against the Human Resources Director, to the City Solicitor.
- 4.11 The investigator shall make and keep a written record of the investigation, including notes of verbal responses made to the investigator in connection with the investigation. The notes shall be made at the time the verbal interview is in progress. Records will be retained in accordance with the City of Allentown Record Retention policy. Employees who are members of a bargaining unit will be afforded the rights determined by the appropriate collective bargaining agreement.
- 4.12 Upon the receipt of a complaint of sexual harassment, the investigator shall immediately:
 - 4.12.1 Make every attempt to obtain a written statement(s) from the person complaining of sexual harassment that includes a comprehensive report of the nature of the sexual harassment complained of and the times, dates and places where the sexual harassment occurred. The investigator shall orally question the person complaining of sexual harassment about any information in the written statement that requires clarification.
 - 4.12.2 Obtain a written statement(s) from witnesses that includes a comprehensive report of the nature of the conduct witnessed and the times, date and places where the conduct occurred and the conduct of the person complaining of sexual harassment toward the person against whom the complaint of sexual harassment was made. The investigator shall orally question witnesses about any information in their written statements that requires clarification.
 - 4.12.3 Obtain a written statement(s) from the person against whom the complaint of sexual harassment has been made. The investigator shall orally question the person against whom the complaint of sexual harassment has been made about any information in the written statement that requires clarification.

- 4.12.4 Prepare a report of the investigation that includes the written statement of the person complaining of sexual harassment, the written statements of witnesses, the written statement of the person against whom the complaint of harassment was made and the investigator's notes connected to the investigation and submit the report to the Director of Human Resources, Risk and Safety. In the event that the sexual harassment complaint is filed against the Director of Human Resources, Risk and Safety, the report shall be submitted to the City Solicitor.

Upon receipt of a report of the investigation of a complaint of sexual harassment against an employee, the Director of Human Resources, Risk and Safety shall promptly review the report. The Director of Human Resources, Risk and Safety may question the person complaining of sexual harassment has been made, witnesses to the conduct in question or any other person who may have knowledge about the conduct in question. The Director of Human Resources, Risk and Safety shall keep written records of the investigation in the same manner prescribed for the investigator. If the Director of Human Resources, Risk and Safety finds the investigation report is adequate, a determination may be made as to whether sexual harassment occurred based on the report, subject to due process hearing rights.

- 4.13 Based on the report and the separate investigation, where one is made, the Director of Human Resources, Risk and Safety shall, within a reasonable time, determine whether the conduct of the person against whom a complaint of sexual harassment has been made constitutes sexual harassment, subject to due process hearing rights. In making that determination, the Director of Human Resources, Risk and Safety shall look at the record as a whole and at the totality of the circumstances, including the nature of the conduct in question, the context in which the conduct, if any, occurred and the conduct of the person complaining of sexual harassment. The determination of whether sexual harassment occurred will be made on a case – by – case basis.
- 4.14 **Sanctions:** If the Director of Human Resources, Risk and Safety determines that the complaint of sexual harassment is founded, the person against whom the complaint of sexual harassment was made shall be subject to immediate and appropriate disciplinary action.
- 4.15 The disciplinary action shall be consistent with the nature and severity of the offense, the rank of the employee and any other factors that relate to fair and efficient administration of the City, including but not limited to the effect of the offense on employee morale and public perception of the offense and the light in which it casts the City.
- 4.16 The disciplinary action may include demotion, suspension, dismissal, warning or reprimand. A determination of the level of disciplinary action shall also be made on a case – by – case basis.
- 4.17 Any disciplinary action shall be consistent with applicable collective bargaining agreements.
- 4.18 A written record of disciplinary action taken shall be kept in Human Resources, including verbal reprimands in alignment with the City of Allentown Record Retention Policy.
- 4.19 The victim of sexual harassment shall be informed of the nature of any disciplinary action taken within 90 days of the implementation of discipline by the Director of Human Resources, Risk and Safety.

- 4.20 The Director of Human Resources Risk and Safety may monitor future conduct of the parties involved in order to reasonably insure that the remedial action taken has been effective in stopping the harassment and that no retaliation has occurred.
- 4.21 **Appeal:** Any individual aggrieved with the investigation, findings or remedies pursuant to this policy, may assert any right of appeal contained in the applicable collective bargaining agreements or pursue any other available civil or criminal remedies.
- 4.22 **Notifications:** This policy will be distributed to all City of Allentown employees Department Directors and City Officials. Language describing adherence to this policy will be included in the terms and conditions of all bids, RFPs, quotes, purchase orders and contracts which are signed by Third party vendors and third party contractors. Third party vendors and contractors who are found in violation of this policy may be subject to sanctions up to and including termination of contract.
- 4.23 Annually, every employee shall receive a copy of this policy and shall be required to certify that they have received such copy. This certification shall be maintained in each employee's personnel file. The policy shall also be permanently placed on all employee bulletin boards in every Department. It shall be a violation of this policy to remove the policy from any bulletin board or deface this policy in any manner. Mandatory training sessions on this policy and the prevention of sexual harassment shall be held for all personnel during appropriate in – service training programs and orientation sessions.
- 4.24 **Employee Responsibility:** It is the duty of all employees, including supervisory personnel, to be familiar with the policy. Each employee has a stake in preventing sexual harassment and thus shares responsibility with the Director of Human Resources, Risk and Safety in eliminating sexual harassment in the workplace.
- 4.25 No employee shall, in any way, retaliate, harass or discriminate against a person making a complaint of sexual harassment or involved as a witness or otherwise with a complaint of sexual harassment.
- 4.26 In most cases in which the sexual harassment is committed by a non – employee against a City employee in the workplace, the Director of Human Resources, Risk and Safety shall take whatever lawful action is necessary against the non – employee to bring the sexual harassment to an immediate end.
- 4.27 Employees are not only encouraged to report instances of sexual harassment, they are obligated to report instances of sexual harassment. Sexual harassment exposes the City to liability and part of each employee's job is to reduce the City's exposure to liability. Failure to report suspected sexual harassment may result in disciplinary action up to and including termination.
- 4.28 Employees are obligated to cooperate in every investigation of sexual harassment. The obligation includes, but is not necessarily limited to:
- 4.28.1 Coming forward with evidence, both favorable and unfavorable concerning a person accused of sexual harassment.
- 4.28.2 Fully and truthfully making a written report under oath upon request.

4.28.3 Orally answering questions when required to do so by an investigator during the course of an investigation of sexual harassment.

4.29 Employees are also obligated to refrain from making accusations of sexual harassment in bad faith. Any employee found to be making an accusation of sexual harassment in bad faith will be subject to disciplinary action.

5.0 EFFECTIVE DATE

This Regulation is effective on the date of issue.

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