

	<p><b>City of Albany</b>  Human Resources Policy  Policy #: HR-ER-05-002  Title: Workplace Discriminatory Harassment</p>	<p><b>Employee Relations</b></p>
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**Purpose**

The purpose of this policy is to clearly establish the City of Albany’s commitment to provide a work environment free from discriminatory harassment (harassment), and to set forth the procedure for investigating and resolving internal complaints of harassment. This policy shall be fully discussed with each employee during New Hire Orientation to ensure that its contents are known by the employee.

All jobs with the City of Albany are extremely important to our community. It is critical that all employees treat each other with dignity and respect. It is the responsibility of each and every employee, supervisor, manager, and department director to make sure that there is no inappropriate behavior occurring in the workplace. Behavior that violates this policy will not be tolerated.

This policy applies to all terms and conditions of employment including but not limited to hiring, placement, promotion, disciplinary action, layoff, reinstatement, transfer, leave of absence, compensation, and training.

**Policy**

Harassment of any person including but not limited to: applicant, client contractor, business invitee, volunteer, temporary service workers, customer, or employee by a supervisor, management employee, or coworker on the basis of: race, religion, color, national origin, disability, use of Family Medical Leave, pregnancy, gender, or age is explicitly in violation of any federal, state, and/or local law will not be tolerated by the City. In addition, should the federal, state, local law be expanded to recognize other protected classes harassment on the basis of such class shall be unlawful and covered within the scope of this policy.

Employees found to be participating in any form of job-based harassment or who retaliates against another employee shall be subject to disciplinary action up to and including discharge from employment.

**Types of Harassment**

For the purposes of clarification, harassment includes but is not limited to the following behaviors:

A. **Verbal Harassment** - Epithets, derogatory comments, slurs, propositioning, unwelcome sexual advances, or otherwise offensive words or comments whether made in general, directed to an individual, or to a group of people regardless of whether the behavior was intended to harass. This includes but is not limited to inappropriate sexually oriented comments on appearance, including dress or physical features, sexual rumors, code words, and race-oriented stories.

B. **Physical Harassment** - Assault, impeding or blocking movement, leering, or the physical interference with normal work, privacy, or movement when directed at an individual. This includes but is not limited to pinching; patting; grabbing; or other unwanted, uninvited physical contact or making explicit or implied threats or promises in return for submission to physical acts.



- C. **Visual Forms of Harassment** - Derogatory, prejudicial, stereotypical, or otherwise offensive posters, photographs, cartoons, E-mails, clothing, body markings, notes, bulletins, drawings, or pictures. This applies to both posted material and material maintained in or on City of Albany equipment or personal property in the workplace.
- D. **Sexual Harassment** - Any act that is sexual in nature and is made explicitly or implicitly a term or condition of employment; is used as the basis of an employment decision; unreasonably interferes with an individual's work performance; or creates an intimidating, hostile, or offensive work environment.
- E. **Discrimination** - Unequal or different treatment of an individual in any personnel action based on their protected class. Failure to provide a reasonable accommodation necessary for an employee with a disability to perform the essential functions of his/her job; or to allow an employee to adhere to sincerely held religious beliefs.

#### **Management Expectations**

Management (directors, managers, and supervisors) is expected to enforce this policy and maintain a productive, non-hostile and non-discriminatory work environment. Members of management must take immediate action to stop and prevent discrimination or harassment, where they know or have reason to know that it is occurring. Tacit approval of discrimination and/or harassment by, for example, laughing and treating a situation as a joke, failing to take action or advising an employee not to complain is prohibited.

Management is responsible for ensuring that notes, comments, posters, and other materials on walls, bulletin boards, or elsewhere in the workplace that are derogatory or show hostility toward an individual or group based on their protected class are removed. Management is expected to educate employees about the impropriety of these items as well as inappropriateness of jokes, slurs, or other negative verbal comments that violate this rule. Management is also responsible for educating employees that the use of City owned equipment, including vehicles and electronic devices such as computers, telephones, photocopiers, or faxes for any of these purposes is prohibited. Additionally, management is expected to consult with the Human Resources Department when an employee requests an accommodation based on disability or religion; or a supervisor becomes aware that an accommodation may be necessary, even if the employee has not made a formal request. Such a request for accommodation will be denied only when it creates an undue hardship on the employer.

If management receives a complaint from a City employee, an applicant, a member of the public, or a contractor about discrimination, harassment, or retaliation at a City worksite, they should contact the Human Resources Director or designee as soon as possible, but no later than two working days after receiving the complaint.



Management is expected to contact the Human Resources Department even if the person making the complaint requested that it be kept confidential. Management should inform an individual making a complaint that strict confidentiality may not be feasible.

Any member of management who is aware of harassment or discrimination and condones it by action or inaction will be subject to disciplinary action.

### **Employee Responsibilities**

1. Not engage in discrimination, harassment, or retaliatory conduct in violation of this rule.
2. If you believe you are being subjected to conduct that violates this rule, first tell the offender to, “stop it!” Say it firmly, without smiling or apologizing. Nothing prevents you from filing a complaint because you did not tell the offender that his or her behavior is unwelcome or asks the offender to stop.
3. Promptly file a complaint using the procedure below if you are subject to discrimination, harassment, or retaliatory conduct prohibited by this policy. If you are witness to prohibited conduct, you are encouraged to bring that information to the attention of a management representative.

Nothing with this rule is intended to restrict an individual’s right to file a grievance under a union contract. However, notifying a union steward or other union official does not constitute filing a complaint with the City under the complaint procedure.

### **Workplace Relationships**

The First Amendment allows anyone to associate with anyone else they desire. It is natural for people who meet in the workplace to sometimes become romantically involved, and it is not the City of Albany’s intent to interfere with any dating relationship except as provided by Human Resources Policy on Employment of Relatives/Intimate Partners. Any involvement between employees must be voluntary and desired by both parties. However, many problems have developed in local government because of dating relationships; and they can interfere with our goal of having a sound, professional work environment. It is not inappropriate for a person to ask out a coworker, volunteer, or other person with a nexus (connection) to a person’s employment with the City of Albany. However, because we work in a professional environment, it is important that employees be aware that their actions could result in unintended problems. For example, if a consensual intimate relationship existed at one time and one person wants to end the relationship, it would be inappropriate for the other person to make any further attempt to initiate or continue a dating relationship. Repeated requests for a dating relationship or a continued intimate relationship could constitute sexual harassment. It is also inappropriate for any relationship to interfere with normal work operations in any manner. Employees who become involved with someone in the workplace must be aware of the following guidelines:



- There shall be no dating activities on City time.
- All behavior between employees shall be behavior conducive to a sound, professional work environment at all times when on City property or on City time. Hand holding, kissing, hugging, sexual comments, and other behavior generally associated with a dating relationship are inappropriate while on City time or City property.

**Procedure**

Any supervisor, manager, or department director who observes inappropriate behavior or receives a harassment complaint shall notify the Human Resources Director or her/his designee immediately.

**Preliminary Complaint**

*Filing of Preliminary Complaint:* Any employee, client, customer, volunteer, contractor, or applicant who alleges to be a victim of discriminatory workplace harassment or any person who objects to discriminatory workplace harassment may make a verbal or written complaint to anyone in management including but not limited to: any supervisor or manager within or outside of their department, any department director, or the Human Resources Director or her/his designee. Employees are encouraged to come forward with a complaint as soon as possible.

*Review of Preliminary Complaint:* Upon notification of a harassment complaint, the supervisor, manager, or department director must notify the Human Resources Director or designee within two (2) working days. Human Resources shall conduct an initial investigation to make a preliminary determination as to whether there is any merit to the complaint. If no merit is found, the Human Resources Director may still meet with the parties involved to attempt to resolve the complaint or conflict between the parties. An informal resolution will be attempted whenever appropriate.

**Formal Complaint**

If after an initial investigation is conducted, and if there is no resolution and/or no conciliation of the preliminary complaint, a formal written complaint can be filed by the complainant. The Human Resources Director or designee will issue a Discriminatory Workplace Harassment Form (see attachment) to the complainant. This form shall be completed, signed, and returned to the Human Resources Department within five (5) days after issuance.

Upon receipt of the formal written complaint, the Human Resources Director or designee will contact the alleged harasser(s) who will be informed of the basis of the complaint, will be given a copy of the form, and will be provided an opportunity to respond. The response shall be in writing, addressed to the Human Resources Director, and received by the Human Resources Department within ten (10) calendar days after being notified of the complaint. Concurrently, a formal investigation of the complaint may be commenced.

*Review of Response and Findings:* Upon receipt of the response, the Human Resources Director or designee may further investigate the formal complaint. Such investigation may include interviews with the complainant, the accused harasser(s),



and any other persons determined by the Human Resources Director to possibly have relevant knowledge concerning the complaint. This may include victims of similar conduct.

Factual information gathered through the investigation will be reviewed to determine whether the alleged conduct constitutes harassment, giving consideration to all factual information, the totality of the circumstances including the nature of the verbal, physical, visual, or sexual conduct and the context in which the alleged incident(s) occurred.

The results of the investigation and the determination as to whether harassment occurred shall be final and binding and will be reported to appropriate persons including the complainant, the alleged harasser(s), the supervisor, and the department director as soon as practicable following the receipt of the response.

#### **Disciplinary Action**

If harassment is determined to have occurred, the Human Resources Director shall take and/or recommend to the appropriate supervisor or department director prompt and effective remedial action against the harasser. The action will be commensurate with the severity of the offense, up to and including discharge from employment. If discipline is imposed, the nature and extent of the discipline will not be divulged to the complainant unless authorized by the Human Resources Director.

#### **Retaliation Prohibited**

Retaliation against any individual who reports discrimination or harassment, testifies, assists, or participates in any manner in an investigation, proceeding, or hearing regardless of the outcome of the complaint, is strictly prohibited. Discrimination or retaliation against an employee for reporting information which that employee believes in good faith to evidence a violation of state or federal law is likewise prohibited. Anyone committing a retaliatory act against an employee involved in harassment or whistleblower proceedings may be subject to discipline up to and including discharge.

#### **Confidentiality**

Confidentiality will be maintained to the fullest extent possible in accordance with applicable federal, state, and local law.

#### **Limitations**

The use of this procedure is limited to complaints related to discriminatory workplace harassment based on a protected class. All other complaints shall be handled through the employee grievance procedure as established by the employee policy manual or union grievance procedure.

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#### **Definitions**

**Protected Class** - Race, religion, color, national origin, disability, use of Family Medical Leave, pregnancy, gender, age, or any other protected class as defined by State or Federal law.

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**References**      Equal Employment Opportunity Commission  
Human Resources Policy on Employment of Relatives/Intimate Partners  
Discriminatory Workplace Harassment Form

**Review and Authorization**

Supersedes: HR-ER-05-001, 11/01/2004	Created/Amended by/date: SR 12/18/2009	Effective Date: 01/01/2010
HR Director:		City Manager:

1. Form or worksheet revision related to this document? No  Yes

If yes, attach a copy of the revised form or worksheet.

2. Training required? No  Yes

