



## Workplace Harassment Administrative Policy # 23

July 2017

### I. POLICY

It is the policy of the city of Portsmouth to provide a workplace free from discrimination and harassment based on gender, race, national origin, age, religion, genetics, color, sexual orientation, gender identity, and disability status. Furthermore, it is the policy of the city that all employees interact with the public and other employees with courtesy, civility, respect, and professionalism. All forms of discrimination and harassment are prohibited by city policy. It is the policy of the city to promptly and appropriately investigate complaints made under this policy to include actions which may constitute discrimination and harassment of which it has knowledge. The city will also not tolerate harassment of those employees who oppose harassment or prohibited discrimination, or who participate in the complaint process.

This policy addresses improper and inappropriate conduct based on gender, race, national origin, age, religion, genetics, color, sexual orientation, gender identity, or disability status. Not all improper and inappropriate conduct that is described or referred to in this policy constitutes unlawful harassment or discrimination. However, regardless of whether such conduct is ultimately determined to rise to the level of unlawful conduct, the city will review the circumstances and will take appropriate disciplinary or other corrective action as deemed necessary.

### II. SCOPE

This policy applies to all city employees. In accordance with the city's Standards of Conduct, all employees, including supervisors and managers, will be subject to discipline, up to and including termination for violations of the policy.

### III. DEFINITIONS

A. **Workplace Harassment** is a form of discrimination which may occur when an employee experiences inappropriate or improper behavior based on gender (whether or not of a sexual nature), race, national origin, age, religion, genetics, color, sexual orientation, gender identity, or disability status which creates a hostile work environment. This may also arise when an employee receives a job-related benefit or detriment which is based upon the employee's reaction to a supervisor's unwelcome sexual behavior.

B. **Hostile Work Environment** is one in which a reasonable person would find hostile, intimidating, or abusive based on race, gender, religion, national origin, age, color, genetic information, sexual orientation, gender identity, or disability status. A hostile work environment is determined by considering the totality of the circumstances of conduct to include frequency, severity, pervasiveness, unwelcomeness, whether the conduct is humiliating or physically abusive, and whether the conduct unreasonably interferes with the employee's work performance. In general, actions taken by supervisors in the normal course of discharging their responsibilities for supervising and managing do not constitute a hostile work environment unless other factors described in this policy support such a finding.

C. **Sexual Harassment** is based upon a hostile work environment as described above. Another form of sexual harassment, known as quid pro quo harassment may occur when submission to unwelcome sexual advances, request for sexual favors, or other conduct of a sexual nature is explicitly or implicitly made a term or condition of employment and the submission to or rejection of such conduct culminates in a tangible employment action. Tangible employment actions include but are not limited to hiring and firing, demotion, suspension, some transfers, promotion and failure to promote, compensation decisions, and decisions causing a significant change in benefits. Examples of sexual harassment may include, but are not limited to:

1. Sexual explicit statements or actions.
2. Sexual oriented remarks that offend the recipient, cause discomfort, humiliation, or interfere with job performance.
3. Requests for sexual favors, especially when accompanied by references concerning an individual's employment status.
4. Any sexually oriented conduct that has the intent or effect of interfering with an employee's job performance.
5. Unnecessary physical contact of any kind (brushing against, patting, pinching, etc.).

D. **Improper and Inappropriate Behavior** is behavior regardless of whether such rises to the level of discrimination or harassment. Examples of such behavior include but are not limited to:

1. Slurs, epithets, humiliating, or derogatory jokes or comments concerning gender, national origin, age, religion, genetics, color, sexual orientation, gender identity or disability status. This may include comments, postings, email, gestures and other written or non-written materials or actions.

2. Threats of physical violence or harm, or other forms of abuse or intimidation based on gender, race, national origin, age, religion, genetics, color, sexual orientation, gender identity, or disability status.
3. Mimicking, teasing, or criticizing an employee based on gender, race, national origin, age, religion, genetics, color, sexual orientation, gender identity, or disability status.
4. Off-color, sexually, or racially suggestive actions, stares, questions, personal accounts, pictures, pin-ups, email, and other written, non-written, spoken, or visual material and actions.
5. Sexually aggressive conduct including physically touching, stroking, kissing or grabbing without the person's consent; any type of intimate touching or grabbing, or motions or gestures indicating or suggesting sexually aggressive or intimate touching, and similar actions. This includes any manner of obscene movements or gestures.
6. Sexual advances, requests for sexual favors, repeated requests for dates after the recipient has indicated no interest, and similar behavior.
7. For supervisors, making submission to sexual advances, requests for sexual favors and participation in other conduct of a sexual nature explicitly or implicitly a term or condition of employment. Taking any type of adverse or favorable job action based on submission to, or rejection of, such conduct is also prohibited.

#### **IV. RESPONDING TO CONDUCT IN VIOLATION OF POLICY**

##### **A. Employees**

If an employee believes that he or she has been subject to any behavior in violation of this policy, he or she may address the situation directly and immediately to the harasser, if possible. If the inappropriate conduct does not cease, or if the employee is unable to or uncomfortable with addressing the alleged harasser directly, he or she should report the incident to his or her own supervisor or manager, or to the Director of Human Resource Management (EEO Officer).

It is important to report any and all concerns of sexual harassment or inappropriate sexual conduct to the Director of Human Resource Management (EEO Officer) or a supervisor/manager as soon as possible. Management must be made aware of the situation so that it can conduct an immediate and impartial investigation and take appropriate action to remediate or prevent the prohibited conduct from continuing.

## **B. Managers & Supervisors**

Managers and supervisors must deal expeditiously and fairly with allegations of any behavior in violation of this policy within their departments whether or not there has been a written or formal complaint. They must:

- ✦ Take all complaints or concerns of alleged or possible harassment, discrimination, inappropriate or improper conduct seriously no matter how minor or who is involved.
- ✦ Ensure that harassment, discrimination, or inappropriate behavior or conduct is immediately reported to Human Resource Management so that a prompt investigation can occur.
- ✦ Take any appropriate action to prevent retaliation or prohibited conduct from recurring during and after any investigations or complaints.

Managers and supervisors who knowingly allow or tolerate harassment, inappropriate and/or improper conduct, or retaliation, including the failure to immediately report such misconduct to Human Resource Management are in violation of this policy and subject to discipline.

## **C. Human Resource Management**

Human Resource Management is responsible for:

1. Ensuring that both the individual filing the complaint (hereafter referred to as the "complainant") and the accused individual (hereafter referred to as the "respondent") are aware of the seriousness of a sexual harassment complaint.
2. Explaining the city's harassment policy and investigation procedures to the complainant and the respondent.
3. Exploring informal means of resolving sexual harassment complaints.
4. Conducting an investigation of the alleged harassment.
5. Notifying the complainant and the respondent of the corrective actions to be taken, if any, and administering those actions.

## **V. COMPLAINT RESOLUTION PROCEDURES**

Employees should report complaints of conduct believed to violate this policy according to this complaint procedure. To facilitate a formal investigation into an alleged violation of this policy, employees may be asked to provide a written statement about the alleged misconduct to the Director of Human Resource Management.

To ensure the prompt and thorough investigation of alleged violations of this policy, the following general procedure applies to investigations of formal complaints:

- A. The complaint should be submitted in writing and include the following:
  - 1. The name, department, position of the person or persons allegedly causing the harassment.
  - 2. A description of the incident(s), including the date(s), location(s), and the presence of any witnesses.
  - 3. The effect of the incident(s) on the complainant's ability to perform his/her job, or other terms or conditions of employment.
  - 4. The names of other individuals who might have been subject to the same or similar harassment.
  - 5. What, if any, steps the complainant has taken to try to stop the harassment.
  - 6. Any other information the complainant believes to be relevant to the complaint.
  
- B. The Director of Human Resource Management has primary responsibility for conducting investigations although other Human Resource Management staff or other individuals may be assigned responsibility at the discretion of the Director of Human Resource Management.
  
- C. The person(s) designated to conduct the investigation will interview the complainant(s).
  
- D. The person(s) conducting the investigation will discuss the complaint which is the basis for the investigation with the department head(s) or representative(s) of the department(s) involved as appropriate.
  
- E. The person(s) alleged to have committed the action(s) which is the basis for the complaint will be interviewed.
  
- F. The investigation will be conducted as necessary to appropriately investigate the allegations. This may include interviewing witnesses and other persons who may have knowledge relevant to the complaint and otherwise obtaining additional information. The person(s) conducting the investigation may request that specific information relevant to the complaint be made available.
  
- G. The Director of Human Resource Management and the person(s) conducting the investigation will review the facts of the case and will present findings to the department head and/or other city officials as appropriate.
  
- H. When there is an indication that misconduct may have occurred, a detailed analysis of the findings and any recommendations for corrective action shall be presented to the appropriate department head(s) and/or other persons.

- I. At any time during the investigation, the complainant and/or the accused employee may be temporarily transferred to another work site or may be placed on administrative leave. These are not punitive actions and do not indicate any preliminary assessment of guilt. These are simply actions taken to separate the affected employees, when appropriate, and to facilitate a prompt investigation of the complaint.
- J. At any time during the course of addressing a complaint, the Director of Human Resource Management may take appropriate action to resolve the issues.
- K. At the conclusion of the investigation, the appropriate Human Resource Management staff will meet with the employee to review the findings.

**VI. DISCIPLINARY ACTION**

If an employee is found to have engaged in inappropriate or improper conduct in violation of this policy or in violation of the Standards of Conduct, the employee is subject to appropriate disciplinary action based on the circumstances of the situation. Such action may range from counseling to disciplinary action up to and including termination.

**VII. CONFIDENTIALITY**

All complaints shall be handled as confidentially as possible, except to the extent necessary to investigate the matter, take appropriate personnel action, or to defend the city and its officers and employees. Information contained in a formal complaint is kept confidential in accordance with applicable law. However, the identity of the complainant is usually revealed to the respondent and witnesses. Human Resource Management will take adequate steps to ensure that the complainant is protected from retaliation during the period of the investigation. All information pertaining to a complaint or investigation is maintained in secure files by the Director of Human Resource Management.

**VIII. NON-RETALIATION**

No retaliation or adverse treatment may be taken against an employee as a result of the employee making a complaint, providing information, or participating in any investigation of a complaint. Acts of retaliation shall be reported immediately to Human Resource Management and shall be promptly investigated. Appropriate action will be taken. Moreover, harassment of those who make a complaint or who participate in any investigation should also be reported, and such shall be investigated, if appropriate.

Approved:

  
City Manager